128-586

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~359.~~ 92

THE FARMERS' FRIEND MANUFACTURING COMPANY, APPELLANT,

vs.

THE CHALLENGE CORN PLANTER COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED OCTOBER 9, 1885.

accession 23864

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1 United States Circuit Court, Northern District of Illinois. In Chancery.

THURSDAY, *January 24th, A. D.* 1884.

Present: Hon. Henry W. Blodgett, district judge.

THE FARMERS' FRIEND MANUFACTURING COMPANY
vs.
THE DEERE AND MANSUR COMPANY *et al.* } 18144.

This cause having been brought to a final hearing upon the pleadings and proofs, and all parties, by their counsel, consenting to the following decree, this court doth find, order, adjudge, and decree that reissued letters patent number 10155, dated July 11th, 1882, for improvements in corn-planters, and set out in the bill of complaint herein, are good and valid; that said Michael Runstetler was the original and first inventor of the improvements specified and claimed therein; that said improvements are useful; that the complainant is the sole owner of said reissued letters patent, and that the defendant, The Deere and Mansur Company, has disturbed, violated, and infringed the exclusive rights of the complainant under said reissue as secured by the first, second, third, fourth, and ninth claims thereof, as in said bill set forth.

And it is further ordered, adjudged, and decreed that the complainant is entitled to recover of the defendant, The Deere and Mansur Company, the profits, gains, and advantages which the said defendant has received or made or which have arisen or accrued to it by reason of its said infringement, together with the damages

2 which the complainant has sustained thereby, and to a perpetual injunction restraining the further unauthorized use of said improvements, as prayed for in said bill.

And it is further ordered, adjudged, and decreed that the complainant do recover of the defendant, The Deere and Mansur Company, its costs, charges, and disbursements in this suit, to be taxed.

It is further ordered that complainant be at liberty to apply to the court at any future time for any further order to carry out or execute this decree.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the decree entered of record in said court on the 24th day of January, A. D. 1884, in the cause wherein The Farmers' Friend Manufacturing Company is the complainant and The Deere and Mansur Company *et al.* are the defendants, as the same appears from the original records of said court, now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 25th day of January, A. D. 1884.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(On the back is the following:)

18144. United States circuit court, northern district of
3 Illinois. In chancery. The Farmers' Friend Manufacturing Company *vs.* Deere and Mansur Co. *et al.* Certified copy of decree. Entered Jan'y 24, 1884.

4 UNITED STATES OF AMERICA, } *ss:*
Western District of Michigan, Southern Division, }

James A. Marley, being of lawful age and duly sworn, says that he resides at Dayton, Ohio, and is a stockholder and director of the Farmers' Friend Manufacturing Company of Dayton aforesaid, and makes this affidavit in its behalf and has authority so to do.

That he has frequently and carefully examined the corn-planter manufactured by the Deere and Mansur Company of Moline, Illinois, which by the decree of the circuit court of the United States for the northern district of Illinois, in equity, was, on the 24th day of January, 1884, in a certain cause therein pending, wherein said Farmers' Friend Manufacturing Company was complainant and said Deere and Mansur Company and others were defendants, being cause number 18144 on the docket of said court, held to be an infringement of reissued letters patent No. 10155; that a certain model, marked "Exhibit Deere and Mansur Model," correctly represents the lever and treadle devices on the planter so held to infringe as aforesaid.

Deponent further says that he has seen a circular issued by the Challenge Corn-Planter Company of Grand Haven, Michigan, and that one such circular is hereto attached and made a part of this affidavit.

And further deponent says not.

JAMES A. MARLEY.

Subscribed and sworn to before me this 23d day of February, 1884.

WILLARD F. KEENEY,
Notary Public in and for Kent County, Michigan, in said District & Division.

5 1871. 1884.

The Challenge Corn-Planter Co., manufacturers of Challenge corn-planters, Grand Haven, Mich. Officers: President, E. G. Bell; superintendent, Levi Scofield; sec. & treas., Geo. Stickney.

OFFICE OF THE CHALLENGE CORN-PLANTER CO.

We take this method to introduce ourselves to the farmers and implement dealers of the great Northwest as the successors to the

Wait M'f'g Co., and hereby call your attention to the old reliable Challenge corn-planter, which we shall continue to manufacture. Our new shops and improved machinery (complete in every respect), coupled with our lumber facilities, enable us to make a better planter than was ever before put on the market, and we are determined that our customers shall have the benefit.

The Challenge corn-planters have been in practical use in all the corn-growing States of the Northwest for the past eleven years, during which time it has made a record that we are proud to point to. We have added several very valuable improvements for the coming season.

First. A hand force lever, which can be coupled with the foot lever at the will of the operator, and enables the operator to force the runner into the hardest soil. This force lever is far superior to any heretofore in use.

Second. We have perfected an adjustable coupling that enables the operator in a moment's time to change the depth of runners on either side, so that in case the frame should become winding so that one runner should run deeper than the other the simple loosening of a nut will remedy the defect.

Third. We have greatly improved the lower or heel drops so that mud cannot obstruct the passage of the corn nor hide the same from view.

Our Specialties.

We manufacture the Challenge two-horse check-row planter, which has the only rotary drop that has stood the test of time. This drop has neither cams, springs, pawls, ratchets, or gearing; also the Challenge combined check row and drill planter, which has no equal. Our trade on this machine is larger than all other drill-planters put together; also the Challenge one-horse planter for checking or drilling, which operates on the same principle as the two-horse drill-planter.

All our planters will plant corn, broom corn, sugar cane, beans, etc., etc., and we make special plates to plant all kinds of seeds, such as onions, beets, etc.

We shall put on the market the coming spring a new check-rower. This rower we shall adjust to our planter only, although it will work equally well on other planters. During last spring's planting we gave this check-rower a thorough test, and found it to be all that could be desired, and we recommend and sell it on its merits alone, believing one test will convince all of its superior excellence.

For illustrated descriptive circulars and photographs call on your nearest dealer, or address the

CHALLENGE CORN-PLANTER CO.,
Grand Haven, Mich.

Warranty.

We warrant our planters to be made of good material, in a workmanlike manner, and to do good work. The purchaser is authorized to use the planter one day, when, if any part fails to work satisfactorily, he shall notify us or our agent and reasonable time be allowed to send a man to put it in order. If it then fails to do good work it may be returned in good order and the money refunded. More than one day's use without notice will be considered a sale.

Any defect in workmanship or material will be made good at any time.

[Horseshoe.]

Good luck to all who buy, sell, or use the old reliable Challenge corn-planters.

Sold by—

——— ———.

6 UNITED STATES OF AMERICA, *Western District of Michigan, Southern Division,* } ss:

Warren J. Brown, of said district and division, being of lawful age and duly sworn, deposes and says that he is employed by the firm of E. T. Brown & Co., of Grand Rapids, Michigan, and the said firm is engaged in the business of selling and dealing in agricultural implements in said city; that on the 10th day of December, A. D. 1883, said firm of E. T. Brown & Co. in the course of their business purchased of the Challenge Corn-Planter Company of Grand Haven, Michigan, in said district and division, one two-horse Challenge corn-planter, marked on the top of each of the hoppers "Challenge rotary drop" and on the back of each hopper "Manufactured by the Wait Manufacturing Company, Grand Haven, Mich;" that deponent has this day examined a Challenge corn-planter now in the Government building at Grand Rapids aforesaid, marked on a tag attacked thereto "Complainant's Exhibit Defendants' Planter, George O. Warrington, notary public," being an exhibit in the case of The Farmers' Friend Manufacturing Company *vs.* The Wait Manufacturing Co. *et al.*, now pending in the circuit court of the United States for the western district of Michigan, southern division, in equity, being case No. 699 therein; that the corn-planter purchased by said E. T. Brown & Co. was similar in every respect to the said exhibit; that at the time of the purchase of said corn-planter by said E. T. Brown & Co. as aforesaid the said Challenge Corn-Planter Co. rendered a bill or statement thereof to said E. T. Brown & Co.,
7 which is hereto annexed and made a part of this affidavit.

And, further, deponent says that on said December 10, 1883, he saw at the warehouse of said Challenge Corn-Planter Company, at Grand Haven aforesaid, a large number of such planters in process of manufacture and in a manufactured state ready for ship-

ment; that said Challenge Corn-Planter Co. was represented on said day by Edward G. Bell, and that he, on behalf of said company, sold said planter to said E. T. Brown & Co.

And further deponent saith not.

WARREN J. BROWN.

Subscribed and sworn to before me this 22d day of February, 1884.

WILLARD F. KEENEY,
Notary Public, Kent Co., Mich.,
in said District and Division.

The Challenge Corn-Planter Co., successors to Wait Manufacturing Co., manufacturers of the Challenge rotary drop corn-planters, Monroe & Seventh streets.

Terms cash.

GRAND HAVEN, MICH., *Dec. 10th*, 1883.

Sold to E. T. Brown & Co., Grand Rapids, Mich.

1 two-horse Challenge corn-planter ---------- $30

Received payment,

CHALLENGE CORN-PLANTER CO.
J. A. STEIN, *For Pres't.*

E. T. B. & Co.

8 UNITED STATES OF AMERICA, } ss:
Western District of Michigan, Southern Division, }

Erwin J. Smith, being duly sworn, says that he resides in Chicago, Illinois, and is a member of the firm of W. H. Banks & Co., dealers in farm machinery, at said city of Chicago; that on the first day of February, 1884, he visited the shops of the Challenge Corn-Planter Company, at Grand Haven, in said district and division, and was shown through the same by the foreman of said shops, and examined a corn-planter of the style which was represented to him by the said foreman and a Mr. Stein, employed in the office of said company, as that which they were making for the present season; that during these interviews he was informed by the said foreman, and, according to his best recollection, by said Stein, also, that said The Challenge Corn-Planter Company had taken orders for over thirteen hundred of such planters during the present season and only been over the ground once, and that they expected to double that number of orders during the present season; that said company had been shipping said corn-planters as fast as made for the purpose of filling said orders; and deponent further says that during said interview he made inquiry for a corn-planter with a rigid hand lever, such as had been theretofore made by the predecessor of said Challenge Corn-Planter Company, the Wait Manufacturing

Company, and was thereupon informed by said foreman that the Farmers' Friend Manufacturing Company had taken that device away from them, but that they had dodged it by attaching the lever then and there shown to deponent and attached to the
9 corn-planters then and there exhibited as aforesaid; that deponent then and there purchased from said Challenge Corn-Planter Company, through said Stein, who acted as its agent therefor, one of said corn-planters, which said corn-planter is now in the city of Grand Rapids, and has been marked "Exhibit X, Challenge Planter, Willard F. Keeney, notary public, Kent county, Mich.;" and at the same time deponent made a contract with said Challenge Corn-Planter Company for such other corn-planters of the same style manufactured by said company as said firm of W. H. Banks & Co. should require during the season; that the wood cut hereto attached correctly represents said corn-planter except as to the drill attachment, and was given to deponent during said interview. Deponent further says that at the time of said visit and interview he saw a large number of corn-planters of the same style as the one purchased by him as aforesaid in the process of being manufactured by said Challenge Corn-Planter Company.

And further deponent saith not.

ERWIN J. SMITH.

Subscribed and sworn to before me this 20th day of February, A. D. 1884.

WILLARD F. KEENEY,
Notary Public in and for Kent County,
in said District and Division.

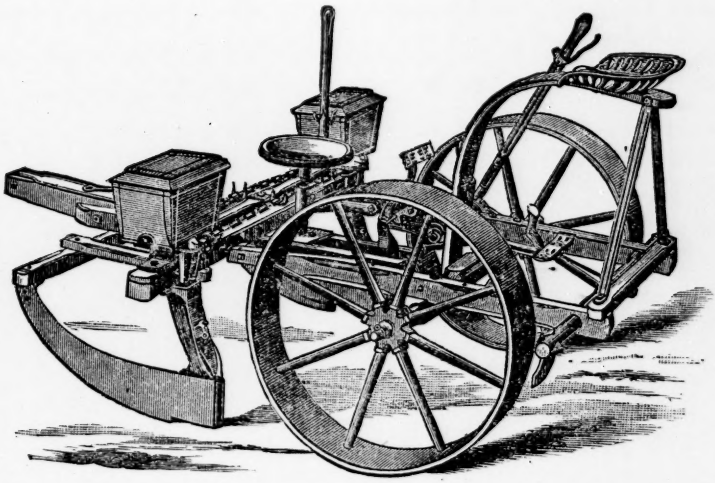
(On the back appears the following:)

The circuit court of the United States for the western district of Michigan, southern division. Affidavit of Erwin J. Smith.

9½

THE CHALLENGE

Two Horse Check Row Planter.



MANUFACTURED BY THE

CHALLENGE CORN PLANTER COMPANY,

GRAND HAVEN, MICH.

The Challenge two-horse check-row planter illustrated on the opposite side of this card is the best planter in the world, for the following reasons:

1st. It has the oldest and best rotary drop made, having been in practical use the last eleven years without a single failure.

2nd. It has the best open-heel drop made, which enables the operator at all times to see the grain deposited.

3rd. It has an adjustable compound coupling that gives the planter flexibility and allows it to conform to uneven ground, thus planting the grain at an even depth.

4th. This compound coupling is adjustable, so that if from any cause one runner should run deeper than the other the simple loosening and tightening of a bolt will remedy the difficulty.

5th. It has the best hand-force lever ever put on a planter, which can be combined with the foot lever when desired. It is the only hand-force lever not in the way of the operator when not in use.

6th. The axles are wrought iron and are set by a straight-edge as accurately as a buggy axletree, making a much easier running machine than the ordinary cast axletree.

7th. Every part of the Challenge planter is as perfect as can be made.

8th. The Challenge planter always leads in practical and valuable improvements.

9th. The Challenge planters have stood the test of time.

10th. The best is always the cheapest. Buy the Challenge and you will have the best.

We also manufacture the two-horse Challenge combined check and drill planter, the one-horse Challenge planter; also the Challenge check-row attachment.

For illustrated descriptive circulars of all our machines address

CHALLENGE CORN PLANTER CO.,
Grand Haven, Mich.

10 STATE OF OHIO, }
Montgomery County, } *ss:*

I, Andrew Runstetler, of the city of Dayton, Montgomery county, Ohio, make oath and say that I am 45 years of age, and that for upwards of twenty years last past I have been connected with the manufacture of corn-planters; that during that time I have invented numerous improvements in corn-planters, many of which have been secured to me by letters patent of the United States; that I am familiar with all, or nearly all, of the different styles of corn-planters which have been on the market for the past twenty years; that for many years I have been in the habit of examining the specifications and drawings of letters patent granted for improvements in corn-planters and of comparing the same with the previous state of the art, and have been called upon to testify as an expert in such matters in suits for infringement in the United States circuit courts; that I have carefully examined the specifications and drawings of letters patent No. 129,320 and reissued letters patent Nos. 9770 and 10155, and believe I fully understand the same; that I am familiar with the corn-planter known as the "Challenge Rotary Drop," formerly made and sold by the Wait Manufacturing

Company of Grand Haven, Michigan, and which was held in the suit of the Farmers' Friend M'f'g Co. against said Wait Manufacturing Company, in the circuit court of the United States for the western district of Michigan, to be an infringement of said reissued letters patent No. 10155; that I have recently examined a corn-planter branded "Challenge Rotary Drop," and purporting to be made by the Challenge Corn-Planter Company of said Grand Haven, and which I have been informed was purchased from
11 said last-named company by W. H. Banks & Co., of Chicago, and which in external appearance is like the cut annexed, with the exception of the drill attachment, and think I fully understand the construction and mode of operation of the same; that I have carefully compared said last-named planter with the rotary drop formerly made by said Wait Manufacturing Company and find the only difference to consist in the facts that the upturned front end of the foot treadle, instead of being adjustable, as in the Wait Challenge, is made in almost the precise form shown in said reissue 10155, and the shaft of the hand lever in said Wait planter was many-sided and passed through a hole in the treadle which conformed to its shape, and through this connection moved together, while in the Challenge Corn-Planter Company's planter that part of the lever shaft which passes through the treadle is round, and therefore would not move the treadle; but to accomplish this an arm is cast on the shaft, to which is pivoted a latch, which, of its own gravity, engages with a stud on the treadle in such a manner that the treadle and lever move simultaneously when either is acted upon; but these changes or difference I consider immaterial, for the reason that said hand lever in said Challenge Corn Planter Company's planter has no office or function to perform, and cannot perform any, except in connection with the foot treadle, with which it was evidently designed to be used, because no means are provided for preventing said latch from engaging with its stud; that I have also carefully examined said challenge rotary drop made by the Challenge Corn-Planter Company in connection with said patents, and comparing the same find that it contains a rear main frame
12 mounted or supported on wheels, and a front runner frame hinged to the main frame, a foot treadle for elevating or depressing the runner frame, in combination with a hand-lock lever, the foot treadle and hand lever being adapted for use in connection for forcing and locking the runners into the ground or lifting and locking them out of the ground, substantially as shown, described, and claimed in said reissue 10155; that said planter also shows a frame, a cover plate, and cut-off, together with a reciprocating slide driven and stopped, substantially as shown and described in said patents Nos. 9770 and 129,320. ANDREW RUNSTETLER.

Sworn to before me by Andrew Runstetler, and by him subscribed in my presence this 15th day of February, A. D. 1884.

[Seal of Notary.]

GEORGE O. WARRINGTON,
Notary Public in and for Montgomery County.

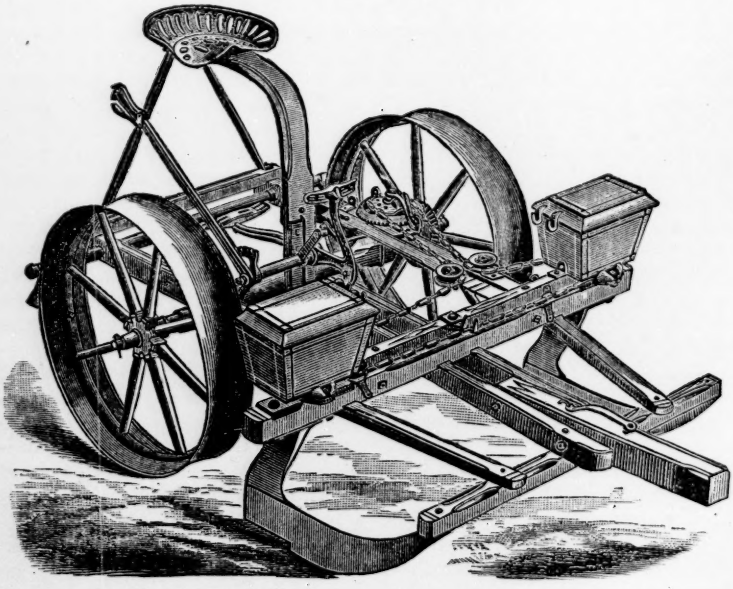
12½ Cut referred to in annexed affidavit.

GEORGE O. WARRINGTON,
Notary Public in and for Montgomery County, Ohio.

THE CHALLENGE

Two Horse Combined Check Row

AND DRILL PLANTER.



MANUFACTURED BY THE

Challenge Corn Planter Co.,

GRAND HAVEN, MICH.

The Challenge two-horse check-row planter with drill attachment is very correctly illustrated on the opposite side of this card.

This drill attachment is entirely different from and works on a different principle than that of any other in the market. The seed plates are driven by means of an endless chain belt passing around them and a driving pulley, which is geared to one of the planter wheels, imparting to the seed plates a continuous smooth rotary motion free from noise or jar.

Our drill seed plates are all prepared especially for the seed to be planted, and will drill the desired number of grains in a place at any distance apart that may be required. We make plates to plant broom corn, sugar cane, beets, beans, onions, etc. We furnish three sets of seed plates with each drill attachment, two for corn and one for broom corn or cane, made to drop about twelve inches apart. Special plates will be furnished to order.

The whole drill attachment is very simple and durable and not liable to get out of order. It runs the easiest and lightest and does the best work of any drill before the public. This drilling device has been ten years before the public, and our sales of them are much larger than that of all other drill attachments put together.

We invite, in fact challenge, comparison with any and all other planters, not only for our drilling attachment, but also our check-row planter and our one-horse drill and check planter.

We also ask special attention to our new check-row attachment, which is now placed on sale for the first time.

Write for illustrated descriptive circulars of all our machines.

CHALLENGE CORN-PLANTER CO.
Grand Haven, Mich.

13 *Bill of Complaint.*

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUF'G CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

To the honorable the judges of the circuit court of the United States for the western district of Michigan, southern division:

The Farmers' Friend Manufacturing Company, a corporation under the laws of and a citizen of the State of Ohio, having its principal place of business at Dayton, in said State of Ohio, brings this its bill of complaint against The Challenge Corn-Planter Company, a corporation created and existing under the laws of the State of Michigan and having its principal place of business at Grand Haven, in said State of Michigan.

I. And thereupon your orator complains and says that, before the 17th day of May, 1880, one Michael Runstetler, of Dayton aforesaid, was the original and first inventor of certain improvements in corn-

planters, fully described in the letters patent hereinafter mentioned, and which had not been known or used before his said invention and which was not, at the time of his application for a patent as hereinafter mentioned, in public use or on sale with his consent or allowance for more than two years.

II. And your orator, on information and belief, further
14 shows unto your honors that, said Michael Runstetler being so as aforesaid the first inventor and discoverer of said improvements and being also a citizen of the United States, on the 18th day of August, 1880, upon due application therefor, letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, were issued to your orator as his assignee, whereby there was granted to your orator, its successors and assigns, or intended so to be, for the term of seventeen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvements as set forth in said letters patent, which are of record in said Patent Office, and by virtue whereof your orator became and is the sole owner of all the rights and privileges granted and secured, or intended to be granted and secured, in and by said letters patent.

III. And your orator further shows unto your honors that said Michael Runstetler, with the consent of your orator, having for good and lawful cause surrendered said last-mentioned letters patent to the Commissioner of Patents, and having made due application therefor, and having in all things complied with the acts of Congress in such case made and provided, your orator did, on the 11th day of July, 1882, obtain new letters patent for the same invention for the residue of said term, marked "reissue No. 10155," issued in due form of law under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and bearing date the day and year last aforesaid, as by the said last-mentioned letters patent in court ready to be produced will appear.

IV. And your orator further shows unto your honors that by virtue of the premises it became and now is the sole and ex-
15 clusive owner of said reissued letters patent and the inventions and improvements described therein and of all the rights and privileges granted and secured, or intended to be granted and secured, thereby.

And that since it became the owner thereof as aforesaid has invested and expended large sums of money and been to great trouble in and about said invention and for the purpose of and in carrying on the business of manufacturing corn-planters and making the same profitable to itself and useful to the public, and that said inventions have been and are of great benefit and advantage, and that corn-planters were and are being made according to said inventions and sold by your orator to great advantage to the public,

and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orator; and your orator believes that it will realize and receive large gains and profits therefrom if infringements by said defendant and its confederates shall be prevented.

VI. And your orator further shows unto your honors that the validity of said reissued letters patent has been affirmed by decrees in equity in several of the circuit courts of the United States, and that such validity has been acquiesced in by manufacturers of corn-planters generally in the United States.

VII. And your orator further shows that in the month of January, 1883, your orator filed its bill in this honorable court against the Wait Manufacturing Company, a corporation, and Edward G. Bell, George S. Stickney, Dwight Cutler, Charles E. Wyman, and Henry W. Buswell, as officers and directors thereof, complaining that said corporation had infringed said reissued patent and praying for an injunction and account; that the defendants appeared and filed their answers, denying, among other things, infringement and the validity of said reissued patent and alleging that before the invention of said improvement by said Runstetler the same had been invented, used, patented, published, and described by others in the United States, and that said reissued letters patent were
16 for inventions different from that described in the original letters patent, and were, therefore, void, to which answer your orator craves leave to refer for greater certainty; that a replication was filed to said answer and testimony taken by your orator, and said suit was brought to a hearing before your honor in November last, and was argued by counsel on both sides, and the decision of this honorable court was duly rendered holding said reissue valid and directing a decree, which was thereafter duly entered, in favor of your orator for an injunction and account against said Wait Manufacturing Company, as by the records of said suit will fully appear.

VIII. And your orator further shows that in ——, 1883, it commenced suit in equity in the circuit court of the United States for the northern district of Illinois against the Deere & Mansur Company of Moline, Illinois, complaining that said company had infringed the reissued patent herein sued on, to which bill of complaint the defendants appeared, by their soliciors, George Harding and John R. Bennett, and filed their answer, denying the validity of said reissued patent and alleging that before the alleged invention of the improvements therein claimed the same had been used, patented, published, and described by others in the United States substantially as set forth in the said answer of said Wait Manufacturing Company and that said reissue was not for the same invention as the original thereof; that a replication was filed to said answer and proofs taken by your orator; and thereupon such proceedings were had that in January last a decree was rendered in favor of your orator in said cause declaring that said reissued patent sued on was good and valid, and that your orator was entitled to an injunction and account as prayed for, as by the records of said suit will more fully appear.

IX. And your orator further shows that some time after the filing of the bill, but before the decree herein mentioned, against the said Wait Manufacturing Company said company changed its
17 name to that of the defendant, The Challenge Corn-Planter Company, or dissolved and was succeeded by the defendant, with said Edward G. Bell, as president, George S. Stickney, as secretary and treasurer, Dwight Cutler, Charles E. Wyman, and Henry W. Buswell, as officers, directors, or stockholders, and that the manufacture by the defendant has been directed and controlled by these persons, who were joint defendants to said suit against said Wait Manufacturing Company and who contributed to the defense thereof and were familiar with the proceedings therein, as your orator is informed and believes.

X. Yet the said defendant, well knowing the premises and the rights secured to your orator aforesaid, but contriving to injure your orator and to deprive it of the benefits and advantages which might and otherwise would accrue unto it from said invention, after the issuing of the letters patent aforesaid and before the commencement of this suit, did, as your orator is informed and believes, without license or allowance and against the will of your orator and in violation of its rights and in infringement of the aforesaid reissued letters patent, unlawfully and wrongfully and in defiance of the rights of your orator, make, construct, use, and vend to others to be used, the said invention, and did make, construct, use, and vend to others to be used, corn-planters embodying the said improvements as specified in the first four claims of said reissue, all in defiance of the rights acquired by and secured to your orator as aforesaid and to its great and irreparable loss and injury, and by which it has been and still is being deprived of great gains and profits which it might and otherwise would have obtained, but which have been received and enjoyed and are being received and enjoyed by the said defendant by and through its aforesaid unlawful acts and doings.

XI. And your orator further shows unto your honors, on information and belief, that said defendant has sold large quantities of said corn-planters, and has a large quantity on hand which it is offering for sale, and has made and realized large profits and
18 advantages therefrom, but to what extent and how much exactly your orator does not know and prays a discovery thereof; and your orator says that the use of said inventions by said defendant and its preparation for and avowed determination to continue the same and its other aforesaid unlawful acts in disregard and defiance of the rights of your orator have the effect to and do encourage and induce others to venture to infringe said patents in disregard of your orator's rights.

XII. And your orator further shows unto your honors that said defendant has had notice of said infringements and of the rights of your orator in the premises, and has been requested to refrain therefrom, but has disregarded said notice and refused to desist from said infringements, and still continues to make and sell said corn-planters in infringement of said reissued patent.

And forasmuch as your orator can have no adequate relief except in this court, to the end, therefore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may, upon the oath of some proper officer, according to its best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to account for and pay to your orator the profits by it acquired and the damages suffered by your orator from the aforesaid unlawful acts.

And your orator prays that said defendant, its servants, agents, attorneys, and workmen, and each and every of them, may be restrained and enjoined provisionally and perpetually by the order and injunction of this honorable court from directly or indirectly making, constructing, using, vending, delivering, working, or putting into practice, operation, or use or in anywise counterfeiting or imitating the said invention or any part thereof or any corn-planters made in accordance therewith or like or similar to those
19 which it has heretofore made, and that your orator may have such further or other relief as to this honorable court shall seem meet and as shall be agreeable to equity.

May it please your honors to grant unto your orator the writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendant and its servants, agents, attorneys, and workmen and each and every of them as is hereinbefore in that that behalf prayed.

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendant, The Challenge Corn-Planter Company, commanding it by a certain day and under a certain penalty to be and appear in this honorable court, then and there to answer the premises and to stand to and abide such order and decree as may be made against it.

And your orator will ever pray, etc.

FARMERS' FRIEND MANUF'G CO.,
By JAMES A. MARLAY.

E. W. WITHEY AND
WOOD & BOYD,
Solicitors and of Counsel for Complainant.

20 UNITED STATES OF AMERICA, }
Western District of Michigan, Southern Division, } *ss:*

On this 23d day of February, A. D. 1884, before me, a notary public in and for Kent county, in said district and division, personally came James A. Marley, known to me to be the person who subscribed the foregoing bill of complaint, and who, having been first duly sworn by me, did depose and say that he was a stockholder and member of the board of directors and an agent of the Farmers'

Friend Manufacturing Company, the complainant in said bill, and that he subscribed said bill of complaint for and on behalf of said complainant, and that he had authority so to do; that he had read said bill of complaint by him subscribed as aforesaid and knew the contents thereof; that the same was true of his own knowledge, save as to matters which are therein alleged on information and belief, and as to those matters he believed it to be true.

ROGER W. BUTTERFIELD,
Notary Public in and for Kent County,
in said District and Division.

21 UNITED STATES OF AMERICA, }
Southern District of Ohio, } *ss:*

Benjamin Kuhns, president of the above-named complainant, being duly sworn, deposes and says that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

B. KUHNS.

Subscribed in my presence and sworn to before me this 15th day of February, A. D. 1884.

[SEAL.] GEORGE O. WARRINGTON,
Notary Public in and for Montgomery County, Ohio.

I acknowledge myself security for all costs for which complainant may be decreed to be liable in this suit.

E. W. WITHEY.

22 [Endorsed:] No. 789. United States circuit court. In equity. The Farmers' Friend M'f'g Co. *vs.* Challenge Corn-Planter Co. Bill. Filed March 1, 1884. H. M. Hinsdill, clerk. Wood and Boyd and Edward W. Withey, solicitors and counselors in patent causes, Cincinnati, sol'rs for compl't.

WESTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the first day of March, A. D. 1884, I served the annexed bill on the Challenge Corn-Planter Company, defendant within named, at Grand Haven, in said district, by delivering to Edward G. Bell (president of said company) personally a true copy of said bill, with the seal of the court thereon endorsed as in hereon impressed.

JAMES MONROE, *U. S. Marshal,*
By HARMON COWENS, *Deputy.*

Fees, $4.60.

23 *Chancery Subpœna.*

THE UNITED STATES OF AMERICA, } ss:
Western District of Michigan, Southern Division, }

The President of the United States of America to The Challenge Corn-Planter Company, defendant, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the western district of Michigan, at Grand Rapids, in said district, on the first Monday in the month of April next, to answer the bill of complaint of The Farmers' Friend Manufacturing Company, complainant, this day filed in the clerk's office of said court, in said city of Grand Rapids, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the western district of Michigan to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Grand Rapids aforesaid, this 1st day of March, in the year of our Lord one thousand eight hundred and eighty-four.

H. M. HINSDILL, *Clerk*,
By —— ——, *Deputy*.

MEMORANDUM.—The within-named defendant is notified that unless it enters its appearance in the clerk's office of said court, at Grand Rapids aforesaid, on or before the day to which the within writ is returnable the bill of complaint will be taken against it as confessed and a decree entered accordingly.

H. M. HINSDILL, *Clerk*,
By —— ——, *Deputy*.

23½ [Endorsed:] No. 789. Circuit court of the United States, western district of Michigan, southern division. Farmers' Friend Manufacturing Co., complainant, *vs.* The Challenge Corn-Planter Company, defendant. Chancery subpœna. Returnable to rule day, first Monday in April, A. D. 1884. Filed March 3d, A. D. 1884. H. M. Hinsdill, clerk. Wood & Boyd and E. W. Withey, compl't's sol'rs.

To the marshal:

The marshal will serve this subpœna and notice for a writ of injunction personally upon each of the defendants, or in case any of them cannot be found, then serve on such by leaving a copy thereof at the dwelling-house or usual place of abode of such defendant with some adult person who is a member or resident of the family, of suitable age and discretion.

——— ———,
Compl't's Sol'r.

WESTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the first day of March, A. D., 1884, I served the within writ on the Challenge Corn-Planter Company, defendant within named, at Grand Haven, in said district, by delivering to Edward G. Bell (who is and was at that time president of said company) personally a true copy of said writ, with the seal of the court thereon endorsed as is hereon impressed, together with like memorandum appended.

JAMES MONROE, *U. S. Marshal,*
By HARMON COWENS, *Deputy.*

Fees, $4.60.

24 *Orders.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss:*

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 1st day of March, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and eighth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,
vs.
THE CHALLENGE CORN-PLANTER COMPANY, Defendant. } No. 789.

In this cause on filing the complainant's bill of complaint, together with the affidavits of Andrew Rumstetler, Erwin J. Smith, Warren J. Brown, and James A. Marley, and a certified copy of a decree of the circuit court of the United States for the northern district of Illinois, in chancery, wherein said Farmers' Friend Manufacturing Company was complainant and the Deere and Mansur Company *et al.* were defendants, and on motion of Wood & Boyd and Edward W. Withey, solicitors for complainant, it is ordered that said defendant herein appear on the 18th day of March, instant, on the opening of court on that day, or as soon thereafter as counsel
24½ can be heard, and show cause why an injunction should not issue herein in accordance with the prayer in said bill of complaint.

And it is further ordered that said complainant cause a copy of this order to be served on said defendant at least ten days before said 18th day of March.

25 WESTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the first day of March, A. D. 1884, I served the annexed order to show cause on the Challenge Corn-Planter Company, defendant within named, at Grand Haven, in said district, by delivering to Edward G. Bell, president of said company, a true copy of said order to show cause.

JAMES MONROE, *U. S. Marshal,*
By HARMON COWENS, *Deputy.*

Fees, $4.60.

26 Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.

vs.

THE RUNSTETLER CORN-PLANTER CO.

STATE OF OHIO, }
County of Hamilton, } *ss:*

Benjamin Kuhns, being duly sworn, says that he is the president of the Farmers' Friend M'f'g Co., the plaintiff in this suit; that he is 59 years of age and has been engaged in manufacturing agricultural implements of various kinds since 1848; that for six years past he has been manufacturing two-horse runner corn-planters; that he is familiar with all or nearly all the machines manufactured and sold; that he has examined nearly all kinds at fairs in the hands of agents and seen very many of the modern corn-planters in practical use in the field; that he has invented and patented a great many improvements in agricultural implements; that he has had a great deal of experience in the examination of specifications and drawings; that he has examined all, as he supposes, the corn-planters patented and made a special study of the means employed for controlling corn-planters; that the Farmers' Friend Co. purchased the Runstetler invention specified and claimed in reissue 10155, and have built and sold several thousand of those corn-planters; that he is familiar with the Kelly patent No. 167,612 referred to in the affidavit of Asa T. Beedle in this cause, and also

27 with the machine as manufactured by said Beedle and Kelly; that the Beedle & Kelly machine is radically different in its principle of construction and mode of operation from that shown and described in the Runstetler reissue No. 10155, as specified in the first, second, third, and fourth claims thereof; that the said Beedle & Kelly machine does not contain a foot lever which is arranged to both depress and elevate the runners. The Runstetler planter as specified in said reissue is so constructed that the hand lever may be used in conjunction with the foot lever to both elevate and depress the runner frame, or the hand lever may be readily locked out of engagement and the foot lever alone be used for depressing or elevating he r unner frame, and the locked hand lever may be instantly oper-

ated to convert the planter from a rigid to a yielding planter. The foot lever can be used to depress the runner frame or force it into the ground when used as a yielding planter. In said Runstetler planter the hand lever is connected to the same pivotal center as the foot lever, which allows both to be used for elevating and depressing in their normal positions, whereas in the Kelly machine when it is desired to use the hand lever for pressing into the ground the foot lever cannot be used for depressing the machine. In addition to this difficulty the connection of the hand lever to the foot lever is through the medium of a bell-crank lever pivoted to the segment of the foot lever, and to that is pivoted a detachable and adjustable latch, which latch has to have a secondary cam lock for securing the engagement of the latch. When in position for depressing the machine through the medium of
the hand lever alone the cam has to be upon the upper side
28 of the catch to lock it in position. When it is desired to
employ the hand lever for lifting the runners or to employ the foot lever for lifting the runners the lock cam has to be released, when the foot lever alone can be used for elevating, or, to bring the hand lever into operation, the latch has to be changed in its position by moving the lever clear forward to bring the lower notch of the latch into engagement with the catch on the foot lever, and the runner must be partially elevated by the foot before the lower notch can be brought into engagement so as to employ the hand lever for lifting. This is so inconvenient and tedious that it is seldom, if ever, used in practice. In the Beedle & Kelly machine as manufactured or as shown in said Kelly patent the hand lever cannot be used to elevate or depress the machine practicably with any single engagement, but a change from one notch to another is necessary to get the two offices. The reason of this is because the pivot of the foot lever is so far forward that the hand lever cannot be connected to that pivotal point and still be in reach of the operator. As a consequence the hand lever is pivoted to the main frame a considerable distance in the rear of the pivotal point of the lifting foot lever, and the bell crank and latch are employed to connect the hand lever to the foot lever at such a distance back from the pivotal point that so long a sweep is required as to render the use of the hand lever impracticable for both offices in the same position. Hence the detachments and re-engagements at the two different
points, as before stated, are essential requisites in said ma-
29 chine. These differences between the Runstetler and the
Beedle & Kelly machines are very radical, the Runstetler being much the most convenient and much more salable, the demand for the same on the market being largely in excess of the Beedle & Kelly machine. The advantages of the Runstetler machine seem to be appreciated by the Beedle & Kelly Co., as they are making the hand and foot lever combined and adapted to be operated substantially as Runstetler's patent, and that the plaintiff's company have caused Beedle & Kelly to be notified that they are infringing the said Runstetler patent; and he is informed by his attorneys, Messrs. Wood & Boyd, that Arthur Stein, Esq., of Cincin-

nati, who has to his knowledge for several years been the attorney for Beedle & Kelly, has notified the plaintiff in this suit that unless they were given a license to use the invention specified in said reissue they were going to fight the patent of plaintiff.

B. KUHNS.

Sworn to before me and signed in my presence this 28th day of March, A. D. 1884.

[SEAL.] MILTON DASHIELL,
Notary of Aforesaid County of Hamilton, State of Ohio.

(On the back appears the following:)

No. 789. United States circuit court, western district of Michigan. In equity. Farmers' Friend M'f'g Co. *vs.* Challenge Corn-Planter Company. Affidavit of B. Kuhns. Filed March 29, A. D. 1884. H. M. Hinsdill, clerk.

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.

vs.

THE RUNSTETLER CORN-PLANTER CO.

30 STATE OF OHIO, } *ss:*
County of Hamilton, }

James A. Marley, being duly sworn, says he resides in Dayton, Ohio; he is 47 years of age. For the last twelve years he has been engaged in the manufacture and sale of agricultural implements. During the last six years he has had an extensive experience in the sale of corn-planters; that he has traveled through most of the Western States; has visited fairs where corn-planters are exhibited and frequently tried; that he has seen various kinds of corn-planters in practical operation in the field, and has been frequently in the habit of running corn-planters himself to exhibit their qualities; that he has examined most, if not all, the modern styles of corn-planters manufactured and sold in the West, and he believes he is familiar with the construction and operation of the same. He has paid especial attention to the method of controlling the runner frame; has examined the various devices and machines containing different mechanical movements for operating the runner frame; that he is well acquainted with the machine made by Beedle & Kelly, referred to in the affidavit of Asa T. Beedle; that he has carefully read and examined and understands the Kelly patent No. 167,612,
31 referred to in the affidavit of said Beedle; that he has read the affidavit in this cause made by B. Kuhns on this twenty-eighth day of March, 1884; that in his opinion the said affidavit of Mr. Kuhns correctly describes the difference between the said Beedle & Kelly machine and the machine shown and described in said

Runstetler reissue No. 10155, with which patent he is very familiar, and that he understands the construction and operation of said Runstetler corn-planter, as described in said patent; that he has had several years' experience in the examination of patents and thinks he is able to understand the construction and operation of patented corn-planting machines; that, in his judgment, the differences between the said Beedle & Kelly machine, referred to in the affidavit of Asa T. Beedle, and the said Runstetler patented planter are very material; that the Beedle & Kelly machine does not contain a foot lever which is adapted to elevate or depress the runner frame. The foot lever in the Beedle & Kelly machine is adapted only for the elevating of the runner frame, which cannot be practically used for pressing the runner into the ground; that the said Beedle & Kelly machine requires the use of the hand lever alone for pressing the runners into the ground, which hand lever must be placed in a different position and in a different relation to the foot lever when used for pressing the runners into the ground from that it occupies when it is used to elevate the runner frame; that this difference in position requires the detachment of the latch and the removal of the locking device and the re-engagement of the latch in the different position in order to use the lever for lifting, as specifically set forth in said
32 Kuhn's affidavit; that he is informed that said Asa T. Beedle and the firm of Beedle & Kelly are both very antagonistic to the complainant's company; and he has seen a letter, purporting to be written by said company, which expresses the willingness and a desire to join a combination for the purpose of defeating the complainant's patent; that he saw said letter in Chicago on or about the 24th day of January, 1884; that complainant's company has, through its attorneys, notified Beedle & Kelly that they are infringing the said patent of complainant, and unless they ceased to manufacture suit would be brought to enjoin them; that affiant has examined said machine of Beedle & Kelly manufactured, as he is informed, during the season of 1884, and thinks that they are substantially identical in construction and operation with the said patent of complainant, employing the foot and hand levers combined and adapted to operate all substantially as specified. Affiant further says that the advantages obtained by using the foot lever in combination with the hand lever, as specified in the Runstetler patent, over the form employed by Beedle & Kelly are very great and so recognized by the trade. Affiant believes that said Beedle & Kelly were led to change their corn-planter so as to embody complainant's patented features, as specified in the first four claims of said reissue, because of its very superior advantages; that the difference in principle of construction and operation are regarded as very great by all users and dealers.

JAMES A. MARLAY.

Sworn to before me and subscribed in my presence this
33 28th day of March, A. D. 1884.

[SEAL.] MILTON DASHIELL,
Notary Public in and for Hamilton County, Ohio.

(On the back appears the following:)

No. 789. United States circuit c't, western dist. of Michigan. In equity. Farmers' Friend M'f'g Co. *vs.* Challenge Corn-Planter Co. Affidavit of James A. Marlay. Filed March 29, A. D. 1884. H. M. Hinsdill, clerk.

34 *Orders.*

THE UNITED STATES OF AMERICA, *Western District of Michigan, Southern Division,* } *ss:*

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 29 day of March, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and eighth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant, *vs.* THE CHALLENGE CORN-PLANTER COMPANY, Defendant. } No. 789.

This cause came on to be heard upon motion for injunction and was argued in part by counsel for the respective parties.

35 STATE OF MICHIGAN, *County of Kent,* } *ss:*

In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING CO., Compl't,

vs.

CHALLENGE CORN-PLANTER CO., Def't.

Levi Schofield, of the city of Grand Haven, in the county of Ottawa and State aforesaid, and within said western district of Michigan, being duly sworn, deposes and says that he is fifty-seven years old, and that during his whole life, since he was a boy, he has been engaged in working with machinery and in mechanical pursuits; that he has invented and taken out twenty-two different patents, and among them several patents in corn-planters; that he began making experiments on corn-planters in 1866, and since that time he has made the subject a careful study and has examined the drawings and claims of every corn-planter that has ever been patented in the United States, and has examined all the specifications in cases resembling even remotely the corn-planter patented to Michael Runstetler, which is the subject of the above-entitled suit.

That the Wait Manufacturing Company manufactured corn-planters which were patented to this deponent and paid him a royalty thereon; that when the suit was commenced by the
36 Farmers' Friend M'f'g Co. in the circuit court of the United States for the western district of Michigan, in equity, against said Wait M'f'g Co., on said Runstetler patent, this deponent was residing in Cedar Rapids, Iowa, and was requested by said Wait M'f'g Co. to look after and to examine into the merits of the suit so commenced; that deponent heard that a similar suit had been commenced in Illinois against the Deere & Mansur Co. of Moline, Illinois, on the same patent, and shortly afterwards deponent was visited at Cedar Rapids aforesaid by one J. W. Atkinson, the general manager and superintendent of said Deere & Mansur Co.; that said Atkinson inquired of deponent what the Wait Co. expected to do about defending the suits, referring to said suit on the Runstetler patents, and also to a suit commenced on Alexander and other patents, and at the same time informed deponent that the Deere & Mansur Co. had employed Harding & Bennett and other attorneys to fight the suits brought by the Farmers' Friend M'f'g Co. against the Deere & Mansur Co., and he requested deponent to get the Wait Co. to join with his company in the defence. Said Atkinson also informed deponent that their attorneys had examined the matter carefully and had decided that the complainants had no case whatever, and said Atkinson claimed that the force lever was made in the Deere & Mansur shops and not by Runstetler, and that he himself was the inventor of it, if anybody, but that in fact the whole principle was old. Said Atkinson was very anxious to enter into an agreement with the Wait Company in reference to the defence jointly of the suits, and expressed great anxiety lest the Wait Co. should let the suits go by default, etc. When he went away he agreed to
37 get the opinion of their attorneys and send it to deponent, which he afterwards did do, which opinion this deponent returned; that at the same time Atkinson told deponent to have the attorneys of the Wait Company write to the Deere & Mansur attorneys for any information or advice in reference to the suit and that they would get it free of expense. Deponent had several interviews with said Atkinson in the spring of 1883, in all of which said Atkinson expressed the greatest confidence that their attorneys would successfully defend the suits, and claimed to have fears that the Wait Co. would settle with the complainant. In May, 1883, deponent received a letter from said Atkinson, bearing date May 28, 1883, a copy of which is hereto attached, marked "Exhibit A." After the receipt of the letter referred to and during the summer of 1883 deponent had an interview with said Atkinson in Chicago, Illinois, at which interview Atkinson agreed for and on behalf of the Deere & Mansur Co. to defend the two suits pending in the U. S. court in Michigan against the Wait Company and to bear all the expense; and in September deponent received a letter from Mr. Atkinson, bearing date Sept. 8, 1883, referring to the same matter, a copy of which letter is hereto attached, marked "Exhibit B." Deponent further says that the Wait Company finally accepted the proposition of

the Deere & Mansur Co. and so notified Messrs. Taggart & Earle, who thereupon, afterwards, as deponent is informed and believes, ceased to act for the Wait Co., except under instructions from Messrs. Harding & Bennett, until after the decree was rendered against the Wait M'f'g Co. in the circuit court of the United States for the
38 western district of Michigan, in equity, on the Runstetler patent, and the Wait M'f'g Co. paid no further attention to the defence of said suits until after the decree, when they were notified that the Deere & Mansur Co. would defend said suits no further; that deponent received from said Atkinson or from said Deere & Mansur Co. several letters showing that the Deere & Mansur Co. were to take the charge of the defence of both suits—one letter dated Sept. 24, 1883, a copy of which is hereto attached, marked "Exhibit C;" one dated Oct. 1st, 1883, a copy of which is hereto attached, marked "Exhibit D;" also copy of letter written to Messrs. Taggart & Earle, a copy of which is attached, marked "Exhibit E."

Deponent further says that he never owned any stock in the Wait Manufacturing Company, and never had any connection therewith except as above stated; that he is a stockholder in the Challenge Corn-Planter Company and as such is interested in the result of the above-entitled suit; that the Challenge Corn-Planter Company is not manufacturing the same planter as the one which was involved in the suit on the Runstetler patent against the Wait Company and has not manufactured a single planter of that kind; that deponent is informed that prior to said decree against the Wait Company the said Wait Co. had sold and disposed of a small number of corn-planters constructed substantially like the one involved in the suit against said Wait Co. to a creditor of said Wait Co., and that such creditor sold the same or turned the same over to the Challenge — Planter Company for sale, and that a few of them have been sold.

Deponent further says that he has carefully examined
39 the original Runstetler patent, No. 231,104, dated Aug. 10, 1880, and the reissue thereof, No. 10155, and dated July 11, 1882, and he finds the claims in the reissue greatly broadened and claiming more than was shown and described as new in the original patent; that the main and only feature on which an infringement is claimed is the use in combination of the hand and foot levers and the parts connected thereto. The original patent describes and claims a specific form merely, while the reissued patent describes and claims broadly a foot and a hand lever in a corn-planter which are or can be used conjointly for raising or depressing the front runner frame of the planter. If the reissued patent is construed to cover the specific form merely, then neither the planter heretofore manufactured by the Wait Company nor the one manufactured by the Challenge Corn-Planter Co. is an infringement on said patent for the reason that neither company ever made a corn-planter embodying the specific form; but if said reissued patent claim is construed broadly to cover a hand and foot lever in a corn-planter which are or may be used for raising or depressing the runner frame, then such reissued patent is void for want of novelty for the reason that there were manufactured and put on sale and sold and

put into practical operation a considerable number of corn-planters having the hand and foot levers so constructed that they could be used conjointly to raise or lower the front runner frame, which front frame was hinged or pivoted to the main frame, and that such planter had been in public use in the United States more than two years prior to the filing of the original application of said Runstet-
40 ler hereinbefore referred to, to deponent's own knowledge.

And this deponent believes that such use can be established by hundreds of witnesses if necessary.

LEVI SCHOFIELD.

Subscribed and sworn to before me this 22nd day of March, A. D. 1884.

[SEAL.] ARTHUR C. DENISON,
Notary Public, Kent Co., Mich., in said Western District.

41 EXHIBIT A.

Dictated, J. W. A. Copy.

MOLINE, ILLINOIS, *May* 28, 1883.

L. Schofield, Esq., care Wait Manufacturing Co., Grand Haven, Mich.

DEAR SIR: Our attorneys, Harding & Bennett, refer us to a late decision in the case of Gage & Herring, known as the Deutchfield case, and which is reported in this week's issue of the Gazette, as meeting the case in which we are mutually interested, in regard to the lever, fully and completely. They also say in regard to the points discussed by you and myself, "The complainants can at any time go back to their original patent, surrendering their present reissue and taking new reissue instead thereof, but in doing so it terminates the present suits, and they will have to commence anew, basing their charge of infringement upon the original claims as they were made, which would leave you out for all past infringement, and you could easily avoid the original claim by changing your planter in some immaterial respects. They undoubtedly have the right to surrender the present reissue and take a new reissue in the language of the original, but it is not at all likely they will do so, as the presumption is they would not have reissued had their original patent been sufficient to protect what they claim as their invention."

This is about as I have thought in regard to the matter, although it is not entirely clear as to complainants' right to reissue a good — to their regular patent.

42 In accordance with this decision I don't think there is any occasion for anybody settling with the Farmers' Friend Co. or feel the least bit alarmed about the outcome of their suit. Any one who does settle will no doubt soon have to feel that they have settled needlessly, and whatever they have paid they might as well have kept; nor is it necessary to abandon any device that such

parties are using that is thought the least desirable as a point of merit or of any advantage in selling.

Please write me what you think of it, and if your company has taken any further action in the matter and had any further notices. Mr. Wood, of the firm of Wood & Boyd, has been in New York and called several times on our attorneys, expressing a desire to settle the case. As far as we are concerned you may rest assured that there will be no settlement. They gave us the same notice about taking settlement as they gave you. I consider it a weak attempt to scare — into a settlement.

Yours truly, JAS. W. ATKINSON.
D.

EXHIBIT B.

Copy.

MOLINE, ILLINOIS, *Sept.* 8, 1883.

L. Schofield, Esq., Grand Haven, Mich.

DEAR SIR: I have just received a letter from Mr. Bennett in regard to the matter talked over with you in Chicago. He still thinks
43 that that is the best mode of procedure for the interest of all parties concerned; wish you would talk with your men and see if it meets with their approval. If so, I will advise with Mr. Bennett and he will take the matter off your hands without any further expense. He says he will run no risk of not getting the case before Baxter, for if he is not on hand the case will be postponed until he arrives. Please write me in regard to the matter at once, and oblige,

Yours truly, J. W. ATKINSON.

EXHIBIT C.

Dictated, J. W. A. Copy.

MOLINE, ILLINOIS, *Sept.* 24, 1883.

L. Schofield, Esq., Grand Haven, Mich.

DEAR SIR: In pursuance of our plan for us to go on and take care of the Wait suits will you not have the Wait Co.'s counsel write Wood & Boyd enquiring "if they have closed their *prima facie* case and desire it to be so considered. If so, he desires to make the necessary arrangements for taking the proofs of defendants?" If they have not closed their case, please have your counsel insist on their doing so forthwith, and give me their reply at earliest day possible. The point we want is to get them to notify your counsel that they have closed their case. As soon as you have advised us of this we will proceed. Please do not let it be known that we are in the
44 thing until after we get the case in such shape that they cannot withdraw or back out or hold back. Until we get it in such shape we want to act indirectly through you and Wait Co.'s counsel, and any expense you are to we will pay. Please give this

matter immediate attention, and send Wood & Boyd's answer as soon as you get it.

Will see you in Chicago next Thursday or Friday, as I expect to be there both days.

Yours truly, J. W. ATKINSON, *Sec't'y.*
D. C. D.

EXHIBIT D.

Dictated, J. W. A.

MOLINE, ILLINOIS, *Octo.* 1*st*, 1883.

L. Schofield, Esq., Grand Haven, Mich.

DEAR SIR: I reached the fair grounds in Chicago last Wednesday afternoon at about three o'clock and immediately set out to find you, and was very much disappointed to find that you had left. We have, however, just received a letter from Messrs. Taggart & Earle showing that you have fixed matters with them as it was agreed upon between you and I when you were here last. It is just what we want, and we will go ahead with the matter as speedily as possible and have not the least idea in the world but that we shall get that thing sat down upon very summarily.

Saw your planter, and think you have got it in very good shape; also check-rower. I notice, however, that the Keystone folks have almost a similar movement. Are they going to make you any trouble?

Yours very truly, J. W. ATKINSON.
D. C. D.

EXHIBIT E.

Dictated, J. W. A. Copy.

Mess. Taggart & Earle, Grand Rapids, Mich.

GENTLEMEN: Your favor of the 28th ult., enclosing letter of Wood & Boyd of July 17th, has been received. We forward same to Harding & Bennett, our attorneys, and letter will be preserved and returned to you as you request. By agreement with the Wait M'n'f'g Co. we are to look after the suit after this. You will probably hear from Mess. Harding & Bennett very soon, no doubt, and we may want you to take one or two steps in the matter before it becomes known that we are connected with the case. Anything you may do in regard to the matter we will, of course, expect to pay for.

We, too, think it very doubtful whether they have made a case or not. Our proceedings in the matter will be for the purpose of conducting the case to a successful termination at the earliest possible day. You or the Wait M'f'g Co. will be advised of everything that we propose to do.

Yours truly, DEERE & MANSUR CO.
D. C. D.

46 (On the back appears the following:)
U. S. circuit court west. dist. Mich., S. D. In equity. Farmers' Friend M'f'g Co. *vs.* Challenge Corn-Planter Co. Aff't of Levi Schofield.

47 STATE OF MICHIGAN, } *ss:*
County of Kent, }

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

FARMERS' FRIEND MANUFACTURING COMPANY, Compl't,

vs.

CHALLENGE CORN-PLANTER COMPANY, Def't.

Edward Taggart, of the city of Grand Rapids, in said county of Kent and district aforesaid, being duly sworn, deposes and says that during the years 1882 and 1883 he was a member of the law firm of Taggart & Earle, of the city of Grand Rapids, Michigan; that about the month of February, A. D. 1883, said firm of Taggart & Earle was employed by the Wait Manufacturing Company in the matter of two suits in the United States circuit court for the western district of Michigan, southern division, in equity, wherein The Farmers' Friend Manufacturing Company was complainant and The Wait Manufacturing Co. and others were defendants; that one of said suits was brought for an alleged infringement of the Runstetler patent, being the same patent in controversy in the above-entitled suit; that said firm of Taggart & Earle were never the solicitors of record in said suits or either of them, but deponent attended to the preparation of the answers therein and several motions in court and some other matters connected therewith; that at or about the time deponent's firm was employed by the Wait M'f'g Co. deponent was in-

48 formed by Levi Schofield, who was acting for the defendants, that the suits would probably never be brought to a trial, for the reason that similar suits were then pending in the U. S. court for the northern district of Illinois by the same complainant against the Deere & Mansur Co. of Moline, Illinois, and that the validity of the patents would probably be settled by such suits; that deponent was requested to correspond with Mess. Harding & Bennett for any information he might need in regard to the defence of said suits; that after certain informalities in the bills of complaint in the U. S. court in Michigan had been corrected deponent prepared the answers in said suits, using the same references as he found in the answers in the suits against said Deere & Mansur Co., and afterwards issues were joined and the complainant gave notice of taking of testimony at Dayton, Ohio, and deponent was requested to attend to the taking of such testimony and informed that one of the attorneys of the Deere & Mansur Co. would be present; that on the 23d day of June, A. D. 1883, deponent attended the place of taking testimony, but did not meet the attorney of said Deere & Mansur Co., as he had expected; that no oral proof was adduced and no proof whatever

taken except as hereinafter set forth; that after the taking of the proofs at Dayton aforesaid deponent obtained an extension of time to take defendants' proofs and notified the Wait Company or Mr. Schofield of the situation.

Some time afterwards and before the time for taking proofs had expired deponent was informed that the Deere & Mansur Company had assumed the defence of Wait M'f'g Co. suits and would pay all expenses connected therewith, and that deponent should cor-
49 respond with the Deere and Mansur Co. or with their attorneys; that from that time on until the argument in the case in the United States court on the Runstetler patent deponent acted only under instructions from the Deere & Mansur Co.'s attorneys; that on the 3d day of November, 1883, deponent received a telegram from John R. Bennett, one of the attorneys of said Deere & Mansur Co., a copy of which is hereto attached, marked "Exhibit A," and deponent, pursuant to the request in said telegram contained, met said Bennett in Chicago on the 4th day of November, 1883, and had with him copies of all the pleadings and proofs, except the Exhibit Corn Planter, that had been taken in both the Wait cases, as well as a large number of the copies of specifications and drawings which had been set up in the defendants' answers, the testimony in the suit on the Rinstetler patent consisting of the reissued patent No. 10155 or a copy thereof and a full-sized corn-planter manufactured by the Wait Co. and a stipulation to the effect that said planter was one manufactured and sold by the Wait Co. in its ordinary course of business, which was all the testimony ever offered by the complainants; which pleadings and proofs and stipulation were at the time and place aforesaid examined by said Bennett; that said Bennett expressed the belief that the complainants had not made out a *prima facie* case, and that it would be entirely safe for the defendants to go to a hearing without proofs, and he requested deponent to use his efforts to get the case set for hearing before Judge Baxter, said case having prior to that date and on the 13th day of October, 1883, been noticed for hearing by the complainants, and said Bennett told deponent that if he would
50 get the suit set for hearing before Judge Baxter he, Bennett, would take care of the suit and argue the same in person, expressing the greatest confidence in obtaining a decree in favor of the defendants; said he had examined the matter carefully and had a brief on the subject.

That after deponent's return from Chicago he learned that he could get the cases placed on the calendar to be heard before Judge Baxter on the 26th of November, 1883, and inquired by telegram of said Bennett if they should be set for that day, and in reply received the telegram a copy of which is hereto annexed, marked "Exhibit B," and some days afterwards and shortly before the day of hearing deponent received the letter a copy of which is also hereto annexed, marked "Exhibit C."

That deponent had not prepared himself for the argument of the causes, and had very little time to do so after receiving said letter; that he never received any brief or authorities from said Bennett,

but proceeded to present the defence on the day of hearing as best he could under the circumstances; that said hearing was in effect an *ex parte* one, inasmuch as the defence had taken no proofs of any kind, and not even the original patent, of which said No. 10155 was a reissue, had ever been offered in evidence, the only defence being on the point that complainant had not made a *prima facie* case.

After the decree was rendered in said suit on the Runstetler patent deponent notified Mr. John R. Bennett of the result, and received a letter dated Dec. 1st, 1883, a copy of which is hereto attached, marked "Exhibit D."

On the 19th day of December, 1883, deponent received a telegram from said Bennett, a copy of which is hereto annexed,
51 marked "Exhibit E;" and, pursuant to the request contained therein, deponent met said Bennett in Chicago on the next day and explained the situation fully, and was informed that the Deere & Mansur Co. would pay the bill for services thus far rendered by deponent; that said company did not care to defend the Wait suits further, but that he should press the Deere & Mansur suits to a hearing and had the greatest confidence in his success; thought it would be advisable for deponent to ask for a rehearing or reopening of the Wait case, etc. Said Bennett also desired deponent to keep him, Bennett, posted if any new steps were taken, and promised to keep deponent informed as to the progress of the Deere & Mansur suits.

After this interview deponent sent his bill in the Wait M'f'g Co. suits to the Deere & Mansur Co., and in reply received a letter, dated Jan'y 26, 1884, with draft for the amount of the bill, a copy of which letter is hereto annexed, marked "Exhibit F."

Deponent further says that since his interview with said Bennett in Chicago, Dec. 20th last, he has never received any information as to the progress of the suits against the Deere & Mansur Co., either from the company or their attorneys, and only learned that decrees had been rendered against said Deere & Mansur Co. of Mr. Boyd, of the firm of Wood & Boyd, on the 23d day of February, 1884.

EDWARD TAGGART.

Subscribed & sworn to before me this 17th day of March, 1884.

[SEAL.] ARTHUR C. DENISON,

Notary Public, Kent Co., Mich., in said District.

52 EXHIBIT A.

Copy.

Dated Chicago, Ills., Nov. 3, '83.

To Taggart & Earle, att'ys-law:

Important I see one of you concerning case Farmers' Friend against Wait M'f'g Co. on behalf my clients, Deere and Mansur, Moline. Can't you meet me Grand Pacific, Chicago, to-morrow, my clients, of course, reimbursing you for time and expenses? I must return New York to-morrow night. Answer.

JNO. R. BENNETT.

EXHIBIT B.

Copy.

Received at Grand Rapids, Mich., 2.06 p. m., Nov. 20, '83.
Dated New York, —— 20.

To Edwin Taggart:

Yes, and ask to have cases dismissed for want of proof of infringement. Have written you.

JOHN R. BENNETT.

EXHIBIT C.

NEW YORK CITY, *November* 20, 1883.

Messrs. Taggart & Earle, Grand Rapids, Mich.

GENTLEMEN: Yours of the 16th received; also dispatch of yesterday, which I answered. About the same time I received word from Cincinnati that Judge Baxter expected to be in Grand Rapids on the 26th. I advise your putting the case on Judge Baxter's calendar, and ask to have bills dismissed on ground that no proof
53 of infringement has been offered, as fully discussed by us when at Chicago. I have no doubt Judge Baxter will dismiss the bills, but should he refuse you can then get further time for taking testimony, and thus throw case off over term, so as to have it ready for final hearing on Judge Baxter's next visit to Grand Rapids.

You can depend on it that Wood & Boyd will not be ready and will do their utmost to prevent the cases coming on before Judge Baxter, but you should insist, and, in case they are postponed, have them postponed to be argued before Judge Baxter at the next term of court.

I am just leaving for Washington, where I will be detained until Thursday night. On my return Friday morning will write you further in reference to this matter and refer you to several authorities.

It will be impossible for me to be in Grand Rapids on the 26th, as I have a case set for argument before Judge Wallace on that day, so that I shall leave the matter entirely in your hands.

If Judge Baxter will positively remain at Grand Rapids until Monday, December 3rd, and can hear the case on that day, I could attend and take part in the argument.

Yours very truly, JOHN R. BENNETT.
S.

54 EXHIBIT D.

Copy.

NEW YORK CITY, *Dec'r* 1, 1883.

Edward Taggart, Esq., Grand Rapids, Mich.

DEAR SIR: I am in receipt of yours of 28th ulto. I am, indeed, surprised that Judge Baxter ordered you to proceed with the argument, and especially in the case in which the Runstetler reissued patents were involved. Your motion to dismiss the bills for want of proof of infringement was made in good faith, and having denied your motions he certainly should, by all known rules, have given you additional time for the preparation of the case on its merits. Why he should have denied you that right in the one case and given it to you in the other I confess I do not understand. In effect it amounted to giving them a decree by default, there being nothing before the court on the part of def'ts. The only object I had in watching these cases was my desire to have them brought to argument on the merits before Judge Baxter, and as that is no longer possible, especially as to the Runstetler reissues, which is the only case of importance, there is nothing to be gained by my having any further connection with them, as I shall vigorously press the two cases in which I am directly interested to a final hearing.

Herewith return your bill with request that you make it out to me personally, when I will send you check for the amount. Having acted in this matter entirely on my own responsibility I
55 prefer paying your bill myself. I may add that the bill is entirely satisfactory in other respects.

Very truly yours, JNO. R. BENNETT. G.

Will take it a favor if you will keep me posted as to your movements in your case.

EXHIBIT E.

Copy.

Dated Chicago, —— 19.

DEC. 19, 1883—3.46 p. m.

To Edward Taggart, of Taggart & Earle, att'ys-at-law:

If possible would like you to meet me here to-morrow morning—Grand Pacific Hotel.

JOHN R. BENNETT.

EXHIBIT F.

Copy.

MOLINE, ILL., *Jan'y* 26, 1884.

Edward Taggart, Grand Rapids, Mich.

D'R S'R: We saw Mr. Bennett the other day, and he requested us to send you the am't of your bill—$91.25—which we enclose herewith. Please acknowledge it as receipt in full for ac. & oblige,

Yours truly, DEERE & MANSUR CO.

56 (On the back appears the following:)

U. S. circuit court, west. dist. Mich., S. D. In equity. Farmers' Friend M'f'g Co. *vs.* Challenge Corn-Planter Co. Aff't of Edward Taggart.

57 STATE OF MICHIGAN, } *ss:*
County of Ottawa, }

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING COMPANY

vs.

CHALLENGE CORN-PLANTER COMPANY.

Dwight Cutler, of the city of Grand Haven, in the county of Ottawa and State aforesaid and within said western district of Michigan, being duly sworn, deposes and says that he is a stockholder and director in said Challenge Corn-Planter Company referred to in the above-entitled suit; that said Challenge Corn-Planter Company is not the same company as the Wait Manufacturing Company and has no connection therewith, but is a company duly organized under the laws of the State of Michigan, and that said Challenge Corn-Planter Company is manufacturing and selling a corn-planter invented by Levi Schofield, of Grand Haven, Michigan, and which this deponent believes contains no devices which infringe on any valid claim in the patent involved in the above-entitled suit; that the directors and officers of said Challenge Corn-Planter Company have taken advice of the best legal talent they could procure in the city of Chicago on the subject and have been advised that the corn-planter of said Challenge Corn-Planter Company is not an infringement on any valid rights of complainant; that said Challenge

58 Corn-Planter Company has never manufactured any other planter than the one above named and never sold any other corn-planter, except as stated in the affidavit of said Levi Schofield, made in connection with this suit; that said Challenge Corn-Planter Company has built large and expensive shops at the city of Grand Haven for the purpose of manufacturing corn-planters, and has ex-

pended more than $75,000 on such buildings and the machinery, and has manufactured a large number of corn-planters in accordance with the invention of said Schofield and have the same on hand for the spring trade; and further deponent saith not.

DWIGHT CUTLER.

Subscribed and sworn to before me this 29th day of March, A. D. 1884.

E. W. WITHEY,
Notary Public, —— Co., Mich., in said District.

(On the back appears the following:)

U. S. circuit court, west. dist. Mich., S. D. In equity. Farmers' Friend M'f'g Co., compl't, *vs.* Challenge Corn-Planter Co., def't. Affidavit of Dwight Cutler.

59 STATE OF MICHIGAN, } *ss:*
County of Ottawa, }

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING COMPANY

vs.

CHALLENGE CORN-PLANTER COMPANY.

William F. Dake, of the city of Grand Haven, in the county of Ottawa and in said western district of Michigan, being duly sworn, deposes and says that he is a mechanical engineer by occupation, and that for twenty-five years last past he has been engaged in mechanical pursuits pertaining to machinery and mechanical structures; has, among other things, made mechanical drawings and patterns for various kinds of machines; that he has made several inventions for which he has obtained patents, and has made several inventions for which he has never obtained patents; that he has prepared specifications and drawings for the Patent Office and has had frequent occasions to examine specifications and drawings in connection with patented machines with a view of determining the scope of patent claims and the similarity and dissimilarity of patented machines.

Deponent further says that he has examined the patent, No. 231,104, to Michael Runstetler and the reissue of the same, and thinks he fully understands both the original patent and the reissue, and the invention described and claimed in each; that he has also examined into the state of art as it stood at and prior to the filing of said original application; that he has also examined and
60 compared the machine manufactured by the complainant under said Rumstetler patent and the machine which the Challenge Corn-Planter Company are manufacturing at Grand Haven, Michigan, and he believes he fully understands the principle and operation of both said corn-planters and their resemblances and differ-

ences, and he says that after such examination and comparison he verily believes that the Challenge corn-planter is not an infringement on said Rumstetler patent No. 10155, nor on any part thereof. Deponent further says, from an examination of the state of the art and from his knowledge of corn-planters, he believes no broad claim could have been obtained on the hand and foot lever and the parts connected thereto, for the reason that hand levers were old at that time, and foot levers were also old, both in corn-planters and other machines, and that in corn-planters a foot lever and a hand lever with a front frame pivoted to the main frame, the foot and hand lever adapted to be used conjointly for raising and depressing the front runner frame and locking the same, had been in public use more than two years prior to the filing of the original application by said Rumstetler; that, in view of the state of the art at the time of the filing of said Rumstetler's original application and the broadening of the claims in the reissue in order apparently to cover all forms of hand and foot levers when used in conjunction, this deponent believes that said reissue, so far as it relates to the hand and foot lever, is invalid and of no effect, for the reason it seeks to cover what was old and in use long prior to the time said Rumstetler made his first application for a patent thereon.

61 Deponent further says that the Farmers' Friend planter, as constructed, has the foot lever and the hand lever rigidly attached to the same shaft, so that by moving either the foot lever or the hand lever the other lever is moved, and, in fact, the two levers must move conjointly, and the movement may be caused either by the foot or by the hand or both, but the hand lever and the foot lever cannot be moved separately; that in the Challenge corn-planter the hand lever is not rigidly attached to the shaft with the foot lever, but has a free motion separate therefrom, and when the planter is in use the hand lever lies back out of the way and the runner frame is controlled entirely by the foot lever; so that the Challenge planter differs from the Rumstetler planter both in construction and principle of operation.

(Signed) WILLIAM F. DAKE.

Subscribed and sworn to before me this 14th day of March, A. D. 1884.

[SEAL.] SILAS M. WRIGHT,
Notary Public in and for Ottawa Co., Mich.

(On the back appears the following:)

U. S. circuit court, west. dist. Mich, S. D. In equity. Farmers' Friend M'f'g Co. *vs.* Challenge Corn-Planter Co. Copy. Affidavit of W. F. Dake.

62 STATE OF MICHIGAN, } ss:
County of Ottawa, }

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING COMPANY

vs.

CHALLENGE CORN-PLANTER COMPANY.

Andrew J. Emlaw, of the city of Grand Haven, in the county of Ottawa and western district of Michigan, being duly sworn, deposes and says that he is a member of the Grand Haven Lumber Company; that he is a millwright by trade and has been at work in machinery nearly all his life since boyhood; that he has invented and patented several machines and has invented and constructed several machines and mechanical devices which he has never patented; that he has had frequent occasion to examine patent specifications and has been called as an expert in patent infringement suits in the United States courts; that he has examined the patent, No. 231,104, granted to Michael Rumstetler August 10, 1880, and also the reissue granted thereon July 11, 1882, No. 10155, and he believes he fully understands the invention in said original patent and in said reissued patent described and claimed; that he has carefully examined into the state of the art in corn-planters as it existed at and prior to the filing of the application for said original patent No. 231,104; that he has also examined the corn-planter manufactured by Challenge Corn-Planter Company at Grand Haven and the corn-planter manufactured by the complainant, and, after
63 a careful examination of both corn-planters and a comparison of the two, this deponent verily believes that the corn-planter manufactured by said Challenge Corn-Planter Company is not an infringement on the said Rumstetler patent nor on said reissue, nor an infringement upon any part thereof; that the Challenge corn-planter differs from said Rumstetler planter both in construction and principle of operation.

This deponent further says that at the time of the filing of the application for said patent No. 231,104 a hand and foot lever in a corn-planter with a front runner frame was old and had been known for more than three years prior thereto, and that said reissued patent No. 10115 appears to be an attempt to cover a device that was not the invention of said Rumstetler, and that said reissued patent was and is, as deponent believes, void.

(Signed) ANDREW J. EMLAW.

Subscribed and sworn to before me this 14th day of March, A. D. 1884.

WALTER G. VAN SEYCK,
Notary Public in and for Ottawa County, Mich.

(On the back appears the following:)
U. S. circuit court, west. dist. Mich., S. D. In equity. Farmers' Friend M'f'g Co., compl't, *vs.* Challenge Corn-Planter Co., def't. Copy. Affidavit of A. J. Emlaw.

64 STATE OF MICHIGAN, } ss:
County of Ottawa, }

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING COMPANY

vs.

CHALLENGE CORN-PLANTER COMPANY.

Aaron Peirce, of the village of Spring Lake, in the county of Ottawa and State of Michigan and within said western district of Michigan, being duly sworn, deposes and says that he is forty-five years old, and that he is pattern-maker by occupation, and has been engaged in such occupation for twenty-five years last past, and has made patterns for almost every kind of machine; that his occupations renders it necessary for him to know and understand the principle and operation of machines and mechanical structures, and he believes he is thoroughly acquainted therewith; that he has made inventions of his own, and in connection with another person took a patent about twenty years ago; that he has had occasion to examine and has examined a large number of patent specifications and drawings with the view of ascertaining the scope and meaning of the patents granted in connection therewith, and that prior to the making of this affidavit he has examined a large number of drawings and specifications pertaining to corn-planters with a view of acquiring knowledge of the state of the art in that particular branch of invention; that he has examined the drawings and speci-
65 fications attached to letters patent No. 231,104, granted to Michael Rumstetler Aug. 10, 1880, as well as the reissue granted thereon July 11, 1882, No. 10155, and he believes he fully understands the machine therein described and claimed, and that he understands the state of the art as it existed at the date of the filing of the application for said original patent.

Deponent further says he has carefully examined the machine manufactured by the complainant in the above-entitled suit and the machine manufactured by the defendant in said suit, and that he fully understands the construction and operation of both machines; that in order to make a careful comparison of the two he had one full-sized machine of each kind set up by the side of the other, and had the working and operation of each illustrated, and deponent says, after such comparison and examination, that he verily believes the machine manufacted by the defendant is not an infringement on the patent of Michael Rumstetler; that the Rumstetler machine has its hand and foot levers rigidly attached

to a shaft, and that the foot lever cannot be moved without moving the hand lever, and the hand lever cannot be moved without moving the foot lever, so that, in fact, the hand and foot levers must work conjointly, although both levers may be moved by the foot or by the hand, while in the Challenge planter, which deponent is informed is the invention of one Levi Schofield, the hand lever is so attached that it lies back out of the way, and the front runner frame is raised and lowered by the foot lever alone, and the hand lever is never used when the planter is used as a flexible planter, as it is generally used in practice, the hand lever being used only occasionally, the principal use being to lock the front frame out of
66 the ground or into the ground, and the combination and arrangement differ both in form and principle from the complainant's corn-planter.

Deponent further says that the original patent No. 231,104 had but one claim relating to the hand and foot levers; that the same was for a combination of specific parts, and necessarily limited to the specific description contained in the specification; that the resssue No. 10155 divides the first claim of the original patent into four, and these claims are much broader than the original claim and, as deponent believes, much broader than the state of the art would justify, and if such claims are or can be broadly construed the reissued patent is wholly void for want of novelty, for the reason that a hand lever and a foot lever with a front frame hinged to the main frame and the hand and foot levers adapted to be used conjointly in raising or depressing the front runner frame was a well-known device and in actual use more than two years prior to the filing of the original application of said Michael Rumstetler; and further deponent saith not.

(Signed) AARON PEIRCE.

Subscribed and sworn to before me this 14th day of March, 1884.

[SEAL.] SILAS M. WRIGHT,
Notary Public in and for Ottawa Co., Mich.

67 (On the back appears the following:)

U. S. circuit court, west. dist. Mich., S. D. In equity. Farmers' Friend M'f'g Co. *vs.* Challenge Corn-Planter Co. Copy aff't of A. Peirce.

68 Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING COMPANY
v.
THE CHALLENGE CORN-PLANTER COMPANY.

STATE OF OHIO, }
County of Hamilton, } *ss:*

Asa T. Beedle, of Troy, county of Miami, State of Ohio, being duly sworn, says—

That he has been engaged in the manufacture of corn-planters for

eleven years last past as a member of the firm of Beedle & Kelly, a firm composed of himself and John Kelly, manufacturers of corn-planters, at Troy, Ohio; that he is familiar with all, or nearly all, the two-horse corn-planters that are now or have ever been built and put upon the market in this country; that he has been for many years in the habit of examining the various patents for corn-planters that have been issued from time to time, and has been and is generally familiar with the state of the art relating to corn-planters; that his examination of the patents aforesaid in connection with his experience as a manufacturer has enabled him to fully understand the various devices set forth and claimed in said patents; that he has examined patent No. 231,104, dated August 10th, 1880, issued to Michael Runstutler, and has also examined the reissue of the same No. 10,155, and that he is familiar with the construction and operation of the devices as set forth in the original and also in the reissue, and that he finds the claims of said reissue to be for other
69 and entirely separate inventions from those in the original, so far as relates to the hand and foot lever mechanism and the device or devices for raising or lowering the runner frame; that in the fall or early winter of 1874–'75 the firm of which affiant was a member began the manufacture of corn-planters in all respects like patent No. 167,612, granted September 14, 1875, to John Kelly, affiant's partner; the only difference between the planters actually made and the planter represented in the drawings of the patent was that the planters made by the firm of Beedle & Kelly had a foot treadle or pedal secured to the lever C, near the rear of said lever, which lever is shown in the copy of the patent hereto annexed and marked "Exhibit A;" that a large number of these planters with the foot treadle for raising and lowering the front runner frame were made and sold by the firm of Beedle & Kelly for the season of 1875 and for several succeeding seasons; that these corn-planters so manufactured and sold by the said Beedle & Kelly as early as 1875 had the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, a foot treadle for elevating or depressing the runner frame in combination with a hand lock lever, the foot treadle and hand lever being adapted to be used in conjunction for forcing and locking the runners into the ground or lifting and locking them out of the ground; that a long time prior to May, 1880, said firm made some slight changes in the planters before referred to, one of which consisted in a cam latch on top of the foot lever, which is fully illustrated in the drawing hereto annexed and marked "Exhibit B," where the cam latch is lettered A, and shown more particu-
70 larly in Fig. 4. This cam latch was a substitute for the means for locking together the hand and foot lever which they had hitherto used. By means of this latch an absolute rigid lock was effected between the hand and foot lever, so that neither could be moved in either direction without moving the other. Affiant says that in the drawing "Exhibit B" the foot pedal or treadle, which was used on all their planters as early as 1875, is marked with the letter B, and that the foot lever was so constructed and arranged

J. KELLY.

Corn-Planter.

71a

No. 167,612.

Patented Sept. 14, 1875.

No. 359.
Farmers Friend
Manf'g Co.
v.
Challenge Corn
Planter Co.
} p. 71a

Fig. 1.

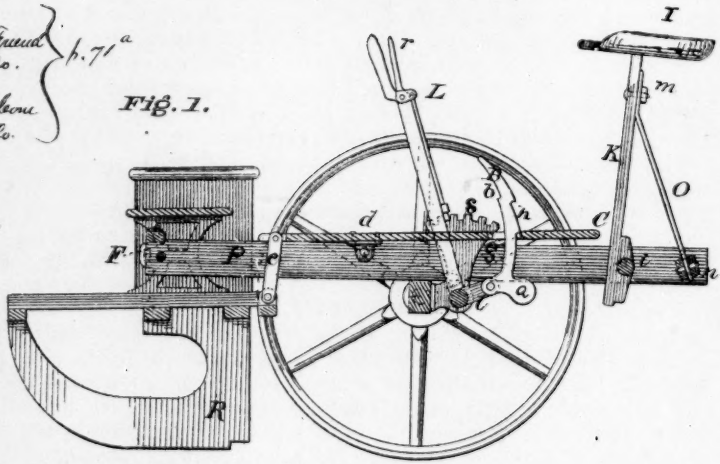
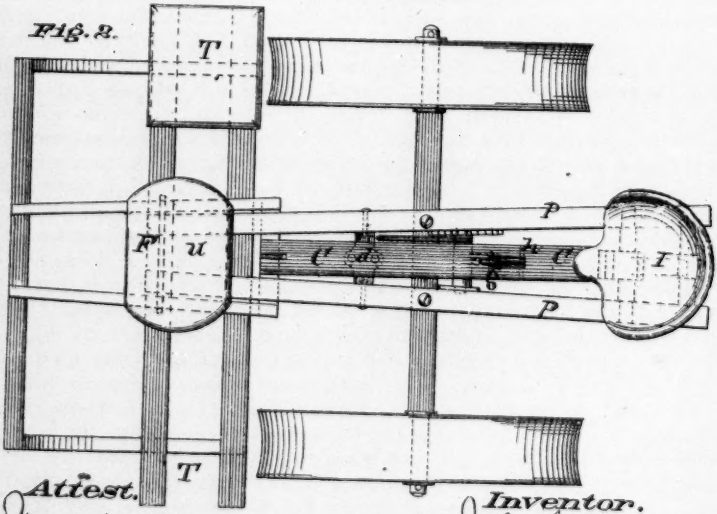


Fig. 2.



Attest.

Wm. S. Bates
Jeremiah F. Ewohig.

Inventor.

John Kelly
by Hatch & Parkinson
Attys

that the front runner frame could be depressed or elevated without the aid of the hand lever by the feet of the operator, and also that the front runner frame could be raised or lowered by means of the hand lever alone, and that both the hand and foot lever could be used conjointly for raising and lowering the front runner frame; that these planters so made and sold by the firm of Beedle & Kelly as aforesaid have gone into extensive use all over the country and have been very successful.

And further deponent saith not.

ASA T. BEEDLE.

Subscribed and sworn to before me this 21st day of March, 1884.

[SEAL.] NELSON M. MAYER,
Notary Public, Hamilton County, Ohio.

71 (On the back appears the following:)

U. S. circuit court, west. dist. Mich., S. D. In equity. Farmers' Friend M'f'g Co. *vs.* Challenge Corn-Planter Co. Aff't of A. T. Beedle.

(Here follows diagram marked p. 71*a*.)

71*b* UNITED STATES PATENT OFFICE.

JOHN KELLY, of Troy, Ohio.

Improvement in Corn-Planters.

Specification forming part of Letters Patent No. 167,612, dated September 14, 1875; application filed March 19, 1875.

To all whom it may concern:

Be it known that I, John Kelly, of Troy, in the county of Miami and State of Ohio, have invented certain improvements in corn-planters, of which the following is a specification:

My invention relates to corn-planters, and consists in so constructing the machine that the driver may, by moving a lever and without leaving his seat, raise or depress the runners, according as the ground is soft or hard, and fix them in that position.

Figure 1 is a longitudinal section of a corn-planter, with my improvements, and Fig. 2 is a top view of the same.

In the drawings, R represents the runners, which are pivoted in the ordinary manner at F to the beams P, which are attached to the axle of the driving-wheels. The tongue of the machine, which is not shown in the drawings, is attached to the runners in the ordinary manner. At *d* is pivoted to the beams P a beam, *c*. This beam is attached at its forward end to the runners by a link, *e*, as shown in Fig. 1. L is a lever, whose fulcrum is at its lower end, which has a short, horizontal arm, *l*, to which is hinged a hook, B. This hook passes through a slot in the beam *c*, and has a weight, *a*,

to keep it against the back end of the slot. The slot has two pins, *g* and *h*, one at each end, on which catch notches in the hook. At S is a toothed sector, into which works a catch actuated by the handle *r*, so that when the operator grasps the handle of the lever L in his hand the handle *r* is pressed close to it and raises the catch so that the lever may be moved backward and forward. This catch and sector serve to keep the lever in any desired position. I is the driver's seat, fixed to a support, K, which is pivoted at *l* to the frame P of the machine. O is a brace pivoted at *n*. At *m* is a bolt, passing through the support K, and through a slot in the brace O.

To balance the machine, the nut *m* is loosened, and the seat I moved backward or forward, which the slot in the brace O allows it to do, until the proper balance is obtained. The nut is then tightened and the seat will be held firmly in place.

If it be desired to box the machine for transportation or other purposes, the bolt *m* is withdrawn, and the seat and brace may then be folded down flat.

In passing over soft ground the wheels sink in to a certain extent, which lowers the runners, and it is often desirable to raise them somewhat. This is done by the driver's drawing the lever-handle L back. This pulls the hook B down, and with it the rear end of the beam *c*, and as that beam is pivoted at *d*, its forward end, and with it the runners R are raised.

In passing over hard ground it is desirable for analogous reasons to lower the runners. This is done by moving the lever L forward, when the runners will be lowered by their own weight.

In the case of very hard ground it is sometimes necessary to force the runners down. To do this the driver, with his foot, pushes the hook B forward, so as to detach the notch from the pin *h*. He then draws the lever back until the notch *b* catches on the pin *g*, and then pushes it forward, thus forcing the runners down into the ground.

It will be seen that the driver has thus a ready means of raising or lowering the runners, or of forcing them down instantaneously and without stopping the machine, and of holding them in any required position without the exercise of muscular power, which is a very valuable assistance, especially where the ground varies from hard to soft, and *vice versa*, in the same field.

The hook B has two notches to catch on the pin *h*. The lower one of these is to raise the runners off the ground in driving to and from the field, and the other for use in the field.

The seed-boxes and feeding mechanism are placed at T T, but are not shown, as they form no part of this invention.

What I claim as my invention is—

1. The combination, in a corn-planter, of hand-lever L, hook B, and beam *c*, for raising or lowering the runners, or forcibly depressing the same, at the will of the operator, substantially as described.

2. The combination, in a corn-planter, of hook B and counterbalance *a*, substantially as and for the purpose set forth.

71c 3. The combination, in a corn-planter, of the hook B, hand-lever L, and toothed sector and catch, substantially as and for the purposes specified.

4. In a corn-planter, the combination of beam *c*, pivoted at *d* to the frame of the machine, hook B, acting in a slot in the beam *c*, as described, and lever L, to actuate the same, for the purposes set forth.

JOHN KELLY.

Attest:
W. F. ROSS.
R. GIBBS.

72 Circuit Court of the United States for the Northern District of Illinois. In Equity.

681 THE FARMERS' FRIEND MANUFACTURING CO.
vs.
18144 THE DEERE & MANSUR CO. *et al.* } No. 18144.

The respondents will take notice that the complainants will examine witnesses and offer proofs in this cause under the 67th rule in equity, as amended, before a notary public, at our office, in the city of Cincinnati, in the county of Hamilton, in the State of Ohio, on Saturday, the 28th day of July, 1883, beginning said examination at 10 o'clock a. m. of said day and continuing said examination from day to day until completed.

WOOD & BOYD,
Solicitors for —.

Received copy July 2nd, 1883, and it is agreed that proofs may be offered pursuant to this notice instead of before the special examiner.

J. R. BENNETT,
Solicitor for Respondents.

Circuit Court of the United States for the Northern District of Illinois. In Equity.

THE FARMERS' FRIEND MANUFACTURING CO.
vs.
THE DEERE & MANSUR CO. *et al.* } No. 18144.

Testimony on behalf of complainant, under the 67th rule, in equity, as amended, pursuant to the annexed notice.

73 Present: Edward Boyd, Esq., of counsel for complainant, and John R. Bennett, of counsel for the respondents.

Counsel for the complainant here offers in evidence reissued letters patent No. 10155, dated July 11, 1882, issued to the complainant.

Counsel for complainant further offers in evidence a corn-planter manufactured by the said Deere and Mansur Co. and marks it "Complainant's Exhibit Defendants' Planter."

Counsel for defendants admits that the corn-planter offered was manufactured and sold by the defendant, The Deere and Mansur Co., in the usual course of business, between the date of said reissue and the filing of the bill herein, and correctly represents others so made and sold.

It is admitted that printed Patent Office copies may be used instead of original patents or certified copies of the same.

STATE OF OHIO, }
County of Hamilton, } *ss:*

I, John E. Jones, a notary public within and for said county, do hereby certify that the foregoing testimony was offered on behalf of the complainant pursuant to the annexed notice, at the office of Wood & Boyd, S. E. corner of Fourth & Main Sts., Cincinnati, Ohio, on Saturday, July 28, 1883. I further certify that I am not of counsel nor attorney nor relative of the parties to this cause, nor in any manner interested in the result thereof.

In testimony whereof I have hereunto set my hand and affixed my seal of office this 28th day of July, 1883.

74 [SEAL.] JNO. E. JONES,
Notary Public, Hamilton Co., Ohio.

Notary's fees, $2.00; p'd by complainant.

(Endorsed:) Filed Aug. 3d, 1883. Opened for Mr. Banning Dec. 5, 1883. W. H. Bradley, clerk.

75 Circuit Court of the United States for the Northern District of Illinois. In Chancery.

FARMERS' FRIEND MANUFACTURING COMPANY

vs.

THE DEERE AND MANSUR COMPANY *et al.*

DECEMBER 18TH, A. D. 1883.

Present: The Hon. Thomas Drummond, circuit judge.

Now, at this day come the parties, by their respective counsel, and the defendants having moved to dismiss the bill herein and the court having overruled the said motion, it is ordered that the defendants have until the twenty-third day of February next to take their evidence in defense, and that the plaintiffs have thirty days thereafter to take rebutting evidence.

76 Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE FARMERS' FRIEND MANUFACTURING COMPANY

vs.

THE DEERE AND MANSUR COMPANY *et al.*

JANUARY 24TH, A. D. 1884.

Present: The Hon. Henry W. Blodgett, district judge.

This cause having been brought to a final hearing upon the pleadings and proofs, and all parties, by their counsel, consenting to the following decree, this court doth find, order, adjudge, and decree that reissued letters patent No. 10155, dated July 11th, 1882, for improvements in corn-planters, and set out in the bill of complaint herein, are good and valid; that said Michael Runstetler was the original and first inventor of the improvements specified and claimed therein; that said improvements are useful; that the complainant is the sole owner of said reissued letters patent, and that the defendant, the Deere and Mansur Company, has disturbed, violated, and infringed the exclusive rights of the complainants under said reissue as secured by the first, second, third, fourth, and ninth claims thereof, as in said bill set forth.

And it is further ordered, adjudged, and decreed that the complainant is entitled to recover of the defendant, The Deere and Mansur Company, the profits, gains, and advantages which the said defendant has received or made, or which have arisen or accrued to it by reason of its said infringement, together
77 with the damages which the complainant has sustained thereby, and to a perpetual injunction restraining the further unauthorized use of said improvements as prayed for in said bill.

And it is further ordered, adjudged, and decreed that the complainant do recover of the defendant, The Deere and Mansur Company, its costs, damages, and disbursements in this suit, to be taxed.

It is further ordered that the complainant be at liberty to apply to the court at any further time for any further order to carry out or execute this decree.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the testimony taken, filed Aug. 3d, 1883, being all the testimony on file, the order entered Dec'b'r 18th, 1883, and the decree entered in said court on the 24th day of January, A. D. 1884, in the cause wherein the Farmers' Friend Manufacturing Company is the complainant and the Deere & Mansur Company *et al.* are the defendants, as the same appears from the original of the same now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 4th day of March, A. D. 1884.

[SEAL.] WM. H. BRADLEY, *Clerk.*

78 (On the back appears the following:)

No. 789. Circuit court of the United States, western district of Michigan, southern division. The Farmers' Friend Manufacturing Co., compl't, *vs.* The Challenge Corn-Planter Co. Affidavits on the part of def'ts. Filed March 31st, A. D. 1884. H. M. Hinsdill, clerk.

79 *Judge Withey's Opinion on Motion for Injunction.*

In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUF'G CO., Complainant,

vs.

THE CHALLENGE CORN-PLANTER CO., Defendant.

Motion for an injunction heard March 29, 1884, Wood & Boyd appearing for the complainant; Edward Taggart for the defendants.

Statement.

The bill of complaint charges that the defendant is manufacturing and selling a corn-planter which is an infringement of an improvement in corn-planters covered by the first four claims of reissue patent No. 10155, issued to Michael Runstetler July 11, 1882, and assigned to complainant, relating to the combination of a foot treadle and hand lever used in conjunction or independently for elevating or depressing the runners, forcing them into the ground and lifting them out, and for locking the runners in or out of the ground.

Judge Withey made the following decision at the close of the argument:

This motion is for an order restraining the defendants from manufacturing and selling a corn-planter alleged to infringe the rights of complainant.

80 A machine constructed by complainant and one manufactured by defendant have been produced in court. The patent for the improvements covered by the first four claims in the reissue I regard as valid. The decree rendered in this court at the last term by the circuit and district judges in favor of this complainant and against the Waite Manufacturing Co. sustained *prima facie* the novelty of the invention and the validity of the reissue. I now entertain no doubt as to its validity. It covers no more than is found in the original patent, in my judgment, considering both the descriptions and the claims contained therein, and which, when fairly viewed, were sufficient to justify the amendment and reissue.

It is very clear that the improvements in corn-planters covered by the reissue and relied upon in this case by complainant produced both new and useful results over the Beedle & Kelly machine exhibited here or any other shown to have been known and in use at the date of the invention; and it is also true, in my judgment, beyond a question, that the defendant's corn-planter infringes the improvements covered by the first four claims in such reissued patent. It performs, in my judgment, in substantially the same way to produce the same result, as the planter made by complainant in accordance with the reissued patent. The defendant's planter may contain improvements in the hand lever and its mode of operation over complainant's, but this will not give the defendant the right to manufacture or sell the improvement covered by the reissue. It is not necessary, in order to infringe, for the combinations and arrangement in the defendant's machine to be the same in form as those in the patented machine; if there is embodied the idea of the patentee, in the judgment of law there is an infringement.

Under the facts and circumstances of this case, I think the rights of the complainant under reissue No. 10155 are sufficiently established. The suit referred to as decided in this court at the last term against the Waite Manufacturing Co. embraced several persons as defendants who were stockholders and directors in that com-
81 pany and who are stockholders and officers in the defendant company. The Waite Company, at the time of hearing that case, had ceased to do business and was defunct. The defendant company was then organized, as I understand, in order to succeed and has succeeded the Waite Manufacturing Co. in the manufacture of corn-planters, substantially the same planter, in my opinion, as the Waite Company manufactured, and which was decreed in that suit to be an infringement. It is true the suit was discontinued as to the individual defendants at the hearing, but the decree against the company was known to such individuals as were stockholders and officers in the Waite Company, and so, far as the same persons are stockholders or officers and directing in managing the defendant company, they must be regarded as having notice of the rights of complainant under this patent. The decree in that case was not by consent, but was made after an argument contesting the complainant's right to have a decree.

It appears that the complainant also obtained last fall a decree under this patent in the United States circuit court in Chicago, by consent, which, though not strong evidence of complainant's rights under his patent, is of some weight. It is shown not to have been a decree collusively obtained, but was, I judge, a result reached after inability on the part of the defendant therein to find evidence that would defeat a recovery.

Under the circumstances, my judgment is that an order should issue against the defendant restraining it from further manufacturing and selling this infringing machine; but, upon giving a satisfactory obligation, with sufficient sureties, to be approved by the clerk of the court, to pay such profits and damages as the complainant may, upon a final hearing of the case, be found entitled to, the defendant

will be permitted to dispose of machines already manufactured and in the hands of agents for sale, or which are in the defendant's factory ready to ship in fulfillment of orders already received.

S. L. WITHEY,
District Judge.

82 *Orders.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss:*

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 31 day of March, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and eighth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,

vs.

THE CHALLENGE CORN-PLANTER COMPANY, Defendant.

In this cause an order to show cause why an injunction should not issue as prayed in the bill of complaint having been made and duly served on said defendant, and the matters thereof coming on to be heard upon the bill of complaint, affidavits, and other papers on file herein, and after having duly considered the same and heard the arguments of the counsel for the respective parties, thereupon the court doth order and adjudge that an injunction do issue as prayed for in said bill of complaint, restraining the said defendant, its agents, servants, employees, and workmen, until the final decree or further order of the court herein, from manufacturing
83 or selling any corn-planters having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, in combination with a foot treadle and a hand lever adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners, or substantially as specified in either of the first four claims of reissued letters patent numbered 10155, mentioned and referred to in said bill of complaint; and it being represented that the defendant has shipped a large number of corn-planters, which are now in the hands of its agents or commission men for sale, and has made contracts of sale for others now in its warehouse in a manufactured state—

It is further ordered that all such corn-planters may be sold and delivered upon the condition that said defendant file in this cause with the clerk of said court a sworn statement showing the number and location of all such corn-planters; and also that said defendant

make and file its bond, with two or more sureties, to be ap-
84 proved by the clerk of this court, conditioned for the payment by said defendant to said complainant all damages that may hereafter be awarded to said complainant by reason of the sale of such corn-planters last aforesaid, said sworn statement and said bond to be filed within ten days hereafter.

85 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

In the name of the President of the United States of America, to the Challenge Corn-Planter Company, of Grand Haven, Michigan, and to your counsellors, attorneys, solicitors, agents, servants, and workmen, and each and every of them, Greeting:

Whereas it has been represented to us in the circuit court of the United States for the western district of Michigan, southern division, in equity, on the part of the Farmers' Friend Manufacturing Company, complainant, that it has lately exhibited its bill of complaint against you, the said Challenge Corn-Planter Company, defendant, to be relieved touching the matters therein complained of, in which bill it is stated, amongst other things, that you are combining and confederating with others to injure the said complainant touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience: We, therefore, in consideration thereof and of the particular matters in the said bill set forth, do strictly command you, the said Challenge Corn-Planter Company, and the persons before mentioned, and each and every of you, under penalty of ten thousand dollars, to be levied on your lands, goods, and chattels to our use, that you do absolutely desist and refrain from manufacturing or selling any corn-planters having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame in combination with a foot treadle and a hand lever
86 adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners, or substantially as specified in either of the first four claims of reissued letters patent numbered 10155, mentioned and referred to in said bill of complaint: Provided, however, That such corn-planters as you have already shipped to your agents or commission men and such corn-planters as you have already made contracts of sale for and now have in your warehouse in a manufactured state may be sold and delivered upon the condition that within ten days hereafter you file in this cause with the clerk of said court a sworn statement showing the number and location of all such corn-planters, and also that within said ten days you make and file your bond, with two or more sureties, to be approved by the clerk of said court, conditioned for the payment by you to said complainant of all damages that may hereafter be awarded to said complainant by reason of the sale

of such corn-planters as last aforesaid until the further order of the court.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Grand Rapids, in said district and division, this first day of April, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] HENRY M. HINSDILL, *Clerk.*

WOOD & BOYD AND
EDWARD W. WITHEY,
Solicitors and of Counsel for Complainant.

WESTERN DISTRICT OF MICHIGAN, *ss*:

I hereby certify and return that on the 3rd day of April, A.
87 D. 1884, I served the within injunction on The Challenge Corn-Planter Company, defendant named in said writ of injunction, at Grand Haven, in said district, by delivering to Edward G. Bell, president of said Challenge Corn-Planter Company, a true copy of said writ, with the seal of the court thereon endorsed as is hereon impressed.

JAMES MONROE,
U. S. Marshal,
By JOHN VAUPELL,
Dept. U. S. M.

Fees, $5.10.

Endorsement: No. 789. United States circuit court. In equity. Farmers' Friend M'f'g Co., complainant, *v.* Challenge Corn-Planter Company, defendant. Injunction. Filed April 12, A. D. 1884. H. M. Hinsdill, clerk. Wood & Boyd and Edward Withey, sol's for compl'nt.

88 March Term, 1884.

THE FARMERS' FRIEND MANUFACTURING COMPANY, Compl't,

vs.

THE CHALLENGE CORN-PLANTER COMPANY, Def't.

APRIL 7, 1884.

In this cause, on motion of Messrs. Stem & Peck and Edward Taggart, solicitors for said defendant—

It is ordered that the appearance of the said defendant be, and the same is hereby, entered herein.

And, on like motion, it is further ordered that the complainant, within twenty days after service upon it or its solicitors of notice of this order, serve upon the solicitors for the defendant a copy of the bill of complaint in this cause, and that in default thereof said bill be dismissed with costs.

STEM & PECK,
EDWARD TAGGART,
Solicitors for Defendant.

89 UNITED STATES OF AMERICA.

WESTERN DISTRICT OF MICHIGAN, } ss:
County of Ottawa, }

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

FARMERS' FRIEND M'F'G CO. *vs.* CHALLENGE CORN-PLANTER CO.

Edwin G. Bell, of said county, being duly sworn, deposes and says that he is president of the above-named defendant, The Challenge Corn-Planter Co., and that the annexed statement is a full, true, and complete statement of the number and location of all corn-planters constructed with the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, in combination with a foot treadle and a hand lever adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners manufactured by said defendant and now in the hands of its agents or commission men for sale or in its warehouse under contract of sale.

E. G. BELL.

Subscribed and sworn to before me this seventh day of April, 1884.
SILAS M. WRIGHT, [SEAL.]
Notary Public, Ottawa Co., Mich.

Statement of Planters on Hand and in Hands of Agents to Fill Contracts.

At factory in Grand Haven, Mich.	324
" Peoria, Ill.	131
" Council Bluffs, Iowa	125
At Omaha, Neb.	190
90 " Indianapolis, Ind.	134
" Kansas City, Mo.	279
At Mendota, Ill.	67
" Sandwich, Ill.	133
" Columbus, Ohio	60
" Cedar Rapids, Iowa	64
" Richmond, Ind	60
" Dubuque, Iowa	10
" Des Moines, Iowa	5
" Sycamore, Ill.	5
" Woodstock, Ill.	15
" Lima, Ind.	15
" Whitewater, Wis.	6
" St. Louis, Mo.	41
" Belvue, Ia.	2
" Lanark, Ill.	2

At Galva, Ill.	8
" Ceurarce, Ill.	5
" Grand Rapids, Mich.	1
" Chicago, Ill.	1
" Bloomington, Ill.	62
" Shelbyville, Ky.	7
" Bromalhevel, Wis.	2
" Sterling, Ill.	4
" Wampim, Wis.	1
" Freeport, Ill.	4
" Morrison, Ill.	2
" Wabash, Ind.	3
" Paynet, Wis.	1
" Marshall, Mich.	1
" Kalamazoo, Mich.	1
" Union City, Mich.	1
" South Bend, Ind.	1
" La Porte, Ind.	3
" Wanatah, Ind.	2
" Evansville, Wis.	1
" Three Rivers, Mich.	1
" Lamont, Ill.	1
" Creston, Ill.	1
" Elgin, Ill.	6
" Dimsler, Ill.	6
" Randolph, Wis.	1
" Ripon, Wis.	1
" Harvard, Ill.	1
" Paw Paw, Ill.	2
" Sturgis, Mich.	1

Know all men by these presents that we, The Challenge Corn-Planter Co., of Grand Haven, Michigan, as principal, and Dwight Cutler, of Grand Haven, and T. Stewart White, of Grand Rapids, as sureties, are held and firmly bound unto the Farmers' Friend Manufacturing Company of Dayton, Ohio, in the sum of ten thou-
91 sand dollars, lawful money of the United States, to be paid to the said Farmers' Friend Manufacturing Co., its certain attorney, successors, or assigns; for which payment, well and truly to be made, we bind ourselves and our successors, heirs, executors, and administrators and each and every of them firmly by these presents.

Sealed with our seals and dated the seventh day of April, 1884.

Whereas, on the 31st day of March, A. D. 1884, the circuit court of the United States for the western district of Michigan, southern division, in equity, in a cause therein pending, wherein The Farmers' Friend Manufacturing Co. is complainant and The Challenge Corn-Planter Co. is defendant, ordered that an injunction issue, as prayed in the bill therein, restraining the defendant during the pendency of that suit from manufacturing or selling any corn-planters constructed substantially as specified in either of the first four claims of reissued letters patent numbered 10155, and

further ordered that inasmuch as the defendant has in the hands of its agents for sale and in its warehouse under contract of sale a large number of manufactured planters such planters might be sold and delivered upon the filing by the defendant of a sworn statement of the number and location of such planters and a bond as specified in such order:

Now, therefore, the condition of this obligation is such that if the said Challenge Corn-Planter Co. shall and do well and truly pay or cause to be paid to the said Farmers' Friend Manufacturing Co. all damages that may hereafter be awarded by said circuit court to the said Farmers' Friend Manufacturing Co. by reason of the sale of such corn-planters specified in the sworn statement hereto annexed, then this obligation to be void; otherwise to remain in full force and effect.

CHALLENGE CORN-PLANTER CO.,
[SEAL.] By E. G. BELL, *Pres't.*
92 DWIGHT CUTLER. [SEAL.]
T. STEWART WHITE. [SEAL.]

Endorsement: No. 789. U. S. circuit court. In equity. Farmers' Friend M'f'g Co. *vs.* Challenge Corn-Planter Co. Bond of def't to pay damages. Filed April 11, A. D. 1884. H. M. Hinsdill, clerk. Stem & Peck and Edward Taggart, def't's sol'rs.

93 *Answer.*

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MAN'F'G CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

The answer of The Challenge Corn-Planter Company, of the city of Grand Haven, in the county of Ottawa and State of Michigan, a corporation duly organized under the laws of said State, defendant, to the bill of complaint of The Farmers' Friend Manufacturing Company.

This defendant, for answer unto said bill of complaint and not waiving any objection thereto, says:

I.

It denies, on information and belief, that Michael Rumstetler was, before the 17th day of May, 1880, or at any time, the original and first inventor of the certain alleged improvements in corn-
94 planters; denies that said alleged invention had not been before known or used and was not in public use or on sale for more than two years prior to his application for a patent therefor, as alleged and set forth in the first paragraph of said bill of complaint.

II.

It admits, on information and belief, that letters patent were issued to the complainant, as set forth in the second paragraph of said bill of complaint, but denies that said letters patent conveyed any exclusive right, as in said bill alleged.

III.

It admits the granting of reissued letters patent No. 10155 on the 11th day of July, 1882, but denies that the original letters patent were surrendered for good and lawful cause; denies that the application for said reissue was made in due form according to law or the acts of Congress in such case made and provided, and alleges, on information and belief, that said reissued letters patent were and are null and void.

IV.

Defendant has no information, knowledge, or belief as to whether complainant has spent large sums of money in manufacturing and introducing said alleged invention, and neither admits nor denies the same.

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V.

Defendant denies that the public has generally acknowledged and acquiesced in the alleged rights of complainant, and denies that complainant has any such exclusive rights as claimed in said bill of complaint.

VI.

Defendant denies that the validity of said reissued letters patent has been affirmed by decrees in equity in several of the circuit courts in the United States, and that such alleged validity has been acquiesced in by manufacturers of corn-planters generally in the United States. On the contrary, defendant says, on information and belief, that the validity of said reissued letters patent has not been affirmed by decrees of the circuit courts of the United States, and that no decree or decrees have been made after a *bona fide* contest upon the merits or validity of said reissued letters patent and none except as hereinafter stated.

VII.

Defendant admits, on information and belief, the allegations contained in the seventh paragraph of the bill of complaint as to the suit in this court against the Wait Manufacturing Company and others, but denies that it was a party thereto or is affected thereby, and avers that said suit was not contested and that no proofs whatsoever were offered by the defendants, and that the bill of complaint was dismissed as to the defendants, Edward

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G. Bell, George S. Stickney, Dwight Cutler, Charles E. Wyman, and Henry W. Buswell, and that said decree against said Wait Manufacturing Company was not a decree on the merits, but was in legal effect a decree by default; and, further, that the original letters patent were not in evidence or before the court in said suit to enable the court to compare the same with the reissue sued on and to pass upon the question of the validity of said reissue.

VIII.

Defendant admits that a decree was rendered against the Deere & Mansur Company of Moline, Illinois, in the circuit court of the United States for the northern district of Illinois, as set forth in the eighth paragraph of the bill of complaint, but, on information and belief, this defendant alleges that said last-named decree was entered by the consent and approval of the defendant, The Deere & Mansur Company, and that said decree, as defendant believes, was collusive and should have no force or effect as a decree on the merits
97 or as against this defendant, who was not a party or privy to said suit; furthermore, that in said suit against the Deere & Mansur Company no proofs whatsoever were taken or filed by the defendant in said suit; also that there were other defendants to said bill besides the Deere & Mansur Company, against whom no decree was asked for or taken, and this defendant so charges the fact to be.

IX.

Defendant says that said Wait Manufacturing Company has never changed its name to that of this defendant. The defendant has no connection whatever with the Wait Manufacturing Company and has not been and is not controlled by the persons who were named as joint defendants in the suit against the Wait Manufacturing Company; that defendant is a corporation duly organized under the laws of the State of Michigan and under the law of 1875, which was not in existence at the time of the formation of the Wait Manufacturing Company; that at the time of the organization of the Challenge Corn-Planter Company there were three and only three members thereof that had been stockholders in the Wait Manufacturing Company.

X.

Defendant denies that it has infringed any valid right of
98 complainant as secured by said reissued patent; denies that it has unlawfully made, constructed, used, or vended to others to be used, corn-planters embodying the said alleged invention alleged to be secured to said complainant by the first four claims of said reissue No. 10155; denies that it has infringed or unlawfully used, made, sold, constructed, or vended to others to be used, any machine, device, or corn-planter that infringed any valid claim of said patent.

XI.

Defendant admits that it has made and sold corn-planters, but denies that said corn-planters so made and sold infringe any valid claim or upon any rights or privileges of complainant.

XII.

Defendant, on information and belief, says that the surrender of said original letters patent was unlawful and without any good or valid reason, and that the reissued letters patent No. 10155 were and are null and void; that said surrender was not made because of any accident, inadvertence, or mistake in the original specification or claims or any papers connected therewith, but for the sole and only purpose of enlarging and expanding the scope of the patent beyond the original invention and beyond anything claimed or shown in the original specification, drawing, model, or any paper or
99 document connected with said original application; that said original patent was in due form of law and not invalid or inoperative for any cause or reason except for want of novelty, as hereinafter specified.

XIII.

Defendant, on information and belief, says that there was no evidence before the Patent Office upon which a reissue could have been lawfully based, and that the action of the Patent Office in granting said reissue was without authority of law and void, and that said reissued patent was and is void and has no force or effect whatever.

XIII*a*.

Defendant alleges, on information and belief, that the alleged invention described in said reissued letters patent No. 10155 and claimed in the first four claims thereof were embodied in and constituted the second claim of the original application of said Runstetler, which said second claim was rejected by the Patent Office for want of novelty; that said claim was stricken out with the knowledge and acquiescence of said Renstetler and his assignees, the Farmers' Friend Manufacturing Company, complainant herein; wherefore the application for said reissue and the reclaiming of such stricken-out matter constituted a fraud upon the Patent Office and upon the public.

100 XIV.

Defendant alleges, on information and belief, that if said Runstetler was the original and first inventor of the invention described and claimed in said original patent and ever had the legal right with complainant to surrender the same for the purpose of reissuing the same, said complainant forfeited all such right by its negligence and long delay; wherefore the said reissued letters patent No. 10155 were and are null and void.

XV.

Defendant, on information and belief, charges that the first four claims of said reissued patent No. 10155 and each and every of them are void, for that the said several alleged inventions or improvements described and claimed therein and each of them, respectively, and every substantial and material part thereof claimed therein as new and the same combination and arrangement of parts were, prior to the date of said alleged inventions or improvements, fully shown, described, or claimed in the following letters patent of the United States, to wit, corn-planter patents, as follows:

No. 1039, granted George W. Brown February 2nd, 1853; reissued September 11th, 1860.

No. 39931, granted J. M. Kelly September 15th, 1863.

101 No. 89512, granted E. & E. C. Slosson April 27th, 1869.

No. 121,204, granted Levi Scofield September 21st, 1871.

No. 120,643, granted A. Hearst November 7th, 1871.

No. 126,751, granted J. Selby May 14th, 1872; reissued April 25th, 1876, No. 7033.

No. 162,599, granted J. C. Barlow April 27th, 1875.

No. 167,612, granted J. Kelly Sept. 14th, 1875.

No. 177,465, granted George W. Brown May 17th, 1876.

No. 200,087, granted J. D. Pope Feb. 5th, 1878.

No. 217,083, granted A. C. Evans July 1st, 1879.

No. 225,318, granted J. W. Atkinson March 29th, 1880.

No. 32294, granted H. J. Howe May 14th, 1861.

Horse-rake patents as follows:

No. 177,176, granted J. F. Trader May 9th, 1876.

No. 21712, granted G. Whitcomb Oct. 5th, 1858.

No. 103,691, granted David H. Weaver May 31st, 1870.

No. 113,552, granted William A. Meyers April 11th, 1871.

No. 96272, granted Schofield & Wise October 26th, 1869.

No. 86855, granted A. Miller Feb. 9th, 1869.

102 No. 45502, granted George Kimball December 20th, 1864.

Wheel-plow patents as follows:

No. 205,752, granted J. Lane July 9th, 1878.

No. 209,175, granted J. Lane Oct. 22nd, 1878.

No. 160,230, granted D. W. Ralston February 23rd, 1875.

No. 199,626, granted S. E. Drake Jan. 29, 1878.

No. 200,656, granted N. Elmer Feb. 26, 1878.

XVI.

Defendant says that the said reissued letters patent No. 10155, and each and every of the claims thereof, are void, for that the said alleged invention or improvement of the said Rumstettler, or every substantial or material part thereof, and the same combinations and arrangements of parts claimed as new in the said reissued letters patent were, prior to the date of the said alleged invention by the

said Rumstettler, known to and used in the United States by the following-named persons at the following-named places, to wit:

By John Dodds, Sebastian Ritty, Allen Thomas, and Samuel Wright, at Dayton, Montgomery county, Ohio, which use is known to the said John Dodds, Sebastian Ritty, Allen E. Thomas, who now reside and may be found at Dayton aforesaid, and
103 by said Samuel Wright, who now resides and may be found at Cambridge City, Wayne county, Indiana.

By F. A. Kennel, Newton Long, at Middletown, Butler county, Ohio, which use is known to the said Kennel and Long, who now reside and may be found at said Middletown.

By David Wilson Banker, in Butler county, Ohio, on his farm, about three and one-half miles northeast of Middletown, Butler county, Ohio, and near Poast Town in said county.

By James F. Trader, Charles W. Trader, and Samuel R. Collier, at Xenia, Green county, Ohio, which use is known to the said Trader, Trader, and Collier, who now reside and may be found at Xenia aforesaid.

By Asa T. Beedle, John Kelly, Isaac N. Kyle, W. L. Day, H. M. Steven, Columbus Kerns, J. B. Lough, and J. M. Gearhart, at Troy, Miami county, Ohio, which use is known to said parties aforesaid, who now reside and may be found at said Troy.

By George W. Brown, of Galesburg, Illinois, at said Galesburg.

By Levi Scofield, of Grand Haven, Michigan, at said Grand Haven.

104 By A. C. Evans, of Springfield, Ohio, at said Springfield.

By James W. Atkinson and the Deere & Mansur Company, of Moline, Illinois, at said Moline.

By Andrew Rumstetter, now of Dayton, Ohio, at Moline, Illinois.

By J. W. Vandever, of Quincy, Illinois, at said Quincy, and by various other persons at various places, whose names, residences, and the places of such prior knowledge and use are at present unknown to this defendant, but for which it is making diligent search, and prays leave to add the same hereto when discovered.

XVII.

Defendant says that the said pretended improvement or invention of the said Runstetler does not, in view of the state of the art at and prior to the time when the said Runstetler pretends to have invented his alleged improvements or invention, constitute or amount to, within the meaning of the law, a patentable invention or improvement, and that the claims thereof and each of them do not include or embrace patentable combinations or arrangements of parts; wherefore the said reissued patent No. 10155 was and is void.

105 XVIII.

Defendant says that the same devices and the same combination of devices, arranged and operating in substantially the same manner and for the same purposes, were long prior to the date of the said

pretended invention or improvement of the said Runstetler old and well known and extensively used in the construction and operation of sulky plows, cultivators, and other well-known agricultural implements analogous to corn-planters, and that it required no invention to apply or adapt such old and well-known devices to the form and construction of corn-planters, but consisted merely in applying or adapting such old and well-known devices and combinations of devices to corn-planters, which application or adaptation required no invention or the exercise of inventive faculty on the part of the said Runstetler.

Wherefore the said reissued letters patent No. 10155 were and are void.

XIX.

Defendant submits that the complainant is not entitled to the relief prayed for in its bill of complaint, and, without admitting as true any of the matters therein charged and not herein sufficiently answered unto, pray to be hence dismissed with their costs in this behalf most wrongfully sustained.

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[SEAL.] CHALLENGE CORN-PLANTER CO.,
By E. G. BELL, *President.*

STEM & PECK AND EDWARD TAGGART,
Solicitors for Defendant.
STEM & PECK, *Of Counsel for Defendant.*

107 [Endorsed:] U. S. circuit court, west. dist. Mich., S. D. In equity. Farmers' Friend M'f'g Co., compl't, *vs.* Challenge Corn-Planter Co., def't. Answer. Filed May 5, 1884. Henry M. Hinsdill, clerk. Stem & Peck and Edward Taggart, def't's sol'rs.

UNITED STATES OF AMERICA,
Western District of Michigan, County of Ottawa, } *ss:*

Edwin G. Bell, of the city of Grand Haven, Michigan, being duly sworn, deposes and says that he is president of the Challenge Corn-Planter Company, the defendant named in the foregoing answer; that he signed the name of said corporation defendant to said answer and affixed its seal thereto for and on behalf of said defendant and was duly authorized so to do; that he has heard read the said answer by him for said company subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

E. G. BELL.

Subscribed and sworn to before me this 24th day of April, A. D. 1884.

[SEAL.] SILAS M. WRIGHT,
Notary Public for Ottawa County, Mich.

108 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,

vs.

CHALLENGE CORN-PLANTER COMPANY, Defendant.

And now comes the said defendant, by Stem & Peck and Edward Taggart, its solicitors, and moves the court now here for an order dissolving the injunction heretofore and on, to wit, the 31st day of March, 1884, issued in this cause.

This motion is based on the records and files of this cause, and on the affidavits of Levi Scofield, Orion Doods, Sebastian Ritty, David W. Banker, Newton Long, Charles W. Trader, James F. Trader, Samuel Wright, and Samuel R. Collier, and on the exhibits referred to in said affidavits.

Dated May 15, A. D. 1884.

STEM & PECK,
EDWARD TAGGART,
Solicitors for Def't.

109 In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,

vs.

CHALLENGE CORN-PLANTER COMPANY, Defendant.

STATE OF MISSOURI, } *ss:*
County of Jackson, }

Levi Scofield, of the city of Grand Haven, in the county of Ottawa and State of Michigan, being duly sworn, deposes and says that he is a stockholder of the Challenge Corn-Planter Company and a director therein.

That when the motion for a preliminary injunction was made on behalf of the complainant in the above-entitled suit deponent was employed by the defendant, The Challenge Corn-Planter Company, to look up evidence to be used in opposition to said motion, and did then make careful and diligent search and inquiry, and used his best effort to produce on the hearing of said motion all the facts and evidence having a bearing thereon, and did produce all of which he then had knowledge.

That since the argument and disposition of said motion deponent has learned of new evidence bearing upon the validity of the patent involved in the said suit, which was entirely unknown to him at the time of the hearing of said motion and, as deponent believes,

to the defendant and its solicitors, and which, for want of knowledge, he was unable to procure on said hearing.

And deponent verily believes that the evidence so as aforesaid discovered is material, and tends strongly to prove that said patent on which this suit is based was and is void for want of
110 novelty, and that had the same been produced on the hearing of said motion said preliminary injunction would not, as deponent verily believes, — been granted.

LEVI SCOFIELD.

Subscribed and sworn to before me this 5th day of May, A. D. 1884.

[SEAL.] J. T. HADLEY,
Notary Public, Jackson County, Mo.

United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.
vs.
CHALLENGE CORN-PLANTER CO.

STATE OF OHIO, }
County of Montgomery, } *ss:*

Orion Dodds, being duly sworn, deposes and says as follows, to wit:

That he is a resident of Dayton, Ohio, is thirty-four years of age, and is the son of John Dodds, manufacturer of horse-rakes at Dayton aforesaid, and has been superintendent of said Dodds' shops for the past ten years, and is familiar with the construction of all the machines made by said Dodds.

That during the years 1877 and 1878 the said Dodds manufactured, under contract for the firm of Wright and Eckert, of Dayton aforesaid, a number of two-horse corn-planters, which planters were known as "the Wright" corn-planter; that he has carefully examined the machine marked "Exhibit 'Wright' Machine, Jas. V. Bonnell, notary public, Butler Co., Ohio," Ap'l 17th, 1884, and recognizes it as one of the corn-planters made by the said John
111 Dodds as aforesaid; that said planter is now exactly in all respects the same as when made, except that the scraper bar has been changed from the upper to the lower side of the frame.

That he is not related to the parties to this controversy and has no interest whatever in its result; that the said John Dodds has made no corn-planters since 1878, and is not now engaged in their manufacture.

ORION DODDS.

Sworn to and subscribed before me this 22d day of April, 1884.

[SEAL.] QUINCY CORWIN,
Notary Public in and for Montgomery County, Ohio.

United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.

vs.

CHALLENGE CORN-PLANTER CO.

STATE OF OHIO, *County of Montgomery,* } ss:

Sebastian Ritty, being duly affirmed, deposes and says as follows, to wit:

That he resides at Dayton, Ohio; is fifty-six years old, and has been for more than ten years past foreman in the shops of John Dodds, manufacturer of horse-rakes, at Dayton aforesaid.

That during the years 1877 and 1878 said Dodds manufactured some two-horse corn-planters for Wright and Eckert, of Dayton aforesaid; that he has carefully examined the planter marked "Exhibit 'Wright' Machine, Jas. V. Bonnell, notary public, Butler Co., Ohio, Ap'l 17th, 1884," and recognizes it as one of the corn-
111½ planters made by said John Dodds as aforesaid; that said planter is now in all respects exactly the same in all its parts as when made, except that the scraper bar has been changed from the upper to the lower side of the frame.

And further deponent saith not.

SEBASTIAN RITTY.

Affirmed to and subscribed before me this 22nd day of April, 1884.

[SEAL.] QUINCY CORWIN,
Notary Public in and for Montgomery Co., Ohio.

United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.

vs.

CHALLENGE CORN-PLANTER CO.

STATE OF OHIO, *County of Butler,* } ss:

David Willson Banker, being duly sworn, deposes and says that he is sixty-three years old; is a farmer by occupation, and lives about three and a half miles northeast of Middletown, Butler county, Ohio, and in said county; that he has lived there for the past thirty years; that in the spring of 1879 he bought a two-horse corn-planter of Newton Long, of Middletown aforesaid, said Long being the agent for F. A. Kennel, dealer in agricultural im-

plements, at said Middletown; that said corn-planter was known as the "Wright" planter and had a rear main frame on supporting wheels, a front runner frame hinged or pivoted thereto, and a combined lock hand lever and foot lever, so arranged and con-
112 nected that the driver could raise and lock the runners out of the ground or force and lock them at different depths into the ground, and could do this by the hand lever alone or by the foot lever alone or by both conjointly; that said planter was used by him for planting corn on his farm in the manner aforesaid for the season of 1879 and each season thereafter until the present time; that said planter gave excellent satisfaction; that he herewith identifies said planter by having the same marked Exhibit "Wright" Machine, Jas. V. Bonnell, notary public, Butler Co., Ohio, Ap'l 17th, 1884.

DAVID WILLSON BANKER.

Sworn to and subscribed before me this 17th day of April, 1884.
[SEAL.] JAS. V. BONNELL,
Notary Public, B. C., Ohio.

United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.

vs.

CHALLENGE CORN-PLANTER CO.

STATE OF OHIO, }
County of Butler, } *ss:*

Newton Long, being duly sworn, deposes and says as follows, to wit:

That he is forty-six years old, and is engaged in the agricultural implement business at Middletown, Butler Co., Ohio.

That for the years 1878, 1879, and 1880 he was agent for F. A. Kennell, dealer in agricultural implements, at said Middletown; that in the spring of 1879 he sold a "Wright" two-horse corn-planter, manufactured by John Doods, of Dayton, Ohio, for
113 Wright and Eckert, to David Willson Banker, a farmer, about three miles and a half from said Middletown.

NEWTON LONG.

Sworn to and subscribed before me this 17th day of April, 1884.
[SEAL.] JAS. V. BONNELL,
Notary Public, B. C., Ohio.

United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.

vs.

CHALLENGE CORN-PLANTER CO.

STATE OF OHIO, *County of Greene,* } *ss:*

Chas. W. Trader, of lawful age, being duly sworn, deposes and says as follows, to wit:

That, excepting the years 1871, '72, & '73, he has lived all his life in Xenia, Greene county, Ohio, and has been since 1877 and now is the president of the Shawnee Agricultural Co., a corporation under the laws of Ohio, having its shops at Xenia aforesaid, which corporation has, from its incorporation, in 1872, and up to and including 1880, been engaged in the manufacture and sale of corn-planters and horse hay-rakes, and still continues the manufacture of horse hay-rakes; that for the season of 1876 they, the said corporation, began the manufacture of two-horse corn-planters, and as early as the year 1878 and during said year they manufactured and sold two-horse corn-planters having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame and with a combined foot treadle and a hand lever
114 adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners; that said hand lever was provided with a locking device to enable the runners to be locked into the ground at varying depths or out of the ground and above the same; that this operation of the runners could be accomplished by the hand lever alone or by the feet alone or by both conjointly; that these machines are exactly represented by the model marked Exhibit Improved Buckeye Machine, W. T. Trader, notary public, Greene Co., Ohio, April 11th, 1884; that this identical model was made during the year 1878 for the salesman who solicited orders for said machines for said corporation, and is now exactly in all respects as it was when made, and has been in the possession of said corporation all the time; that said machines were made and sold by said corporation each and every season until and including the season of 1880.

That said corporation, in 1875, made and sold over two hundred horse hay-rakes in all respects corresponding with the drawings and specifications of United States letters patent 177,176, dated May 9th, 1876, and have made and sold said rakes and exhibited the same at fairs throughout the country every year thereafter and still continue to make said rakes; that all of said rakes contained a combined foot and hand lever precisely as shown in said patent, and that one of said rakes was shipped to and now is, as affiant believes, in the warehouse of Wm. C. Denison, at Grand Rapids, Michigan; that said

corn-planters and rakes made and sold as aforesaid were entirely successful operative machines.

Affiant says he is not related to any of the parties to the above-entitled suit and has no interest whatsoever in the result of the same.

CHAS. W. TRADER.

Sworn to and subscribed before me this 11th day of April, 1884.

W. F. TRADER,
Notary Public, Greene County, O.

115 United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.

vs.

CHALLENGE CORN-PLANTER CO.

STATE OF OHIO, } *ss:*
County Greene, }

James F. Trader, of lawful age, being duly sworn, deposes and says as follows, to wit:

That he has lived all his life in Xenia, Greene county, Ohio, and is a stockholder of the Shawnee Agricultural Co., a corporation under the laws of Ohio, having its shops at Xenia aforesaid; that from 1872 to 1877 he was president of said The Shawnee Agricultural Co., which company was during said period and up to the year 1880 engaged in the manufacture of corn-planters and horse hay-rakes, and still continues the manufacture of horse hay-rakes; that for the season of 1876 they began the manufacture of two-horse corn-planters, and as early as the year 1878 they manufactured and sold two-horse corn-planters having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame and with a combined foot treadle and a hand lever adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners; that said hand lever was provided with a locking device to enable the runners to be locked into the ground at varying depths or out of the ground and above the same; that this operation of the runners could be accomplished by the hand lever alone or by the feet alone or by both in conjunction; that these machines are exactly represented by the model I herewith furnish, marked Exhibit Improved Buckeye Ma-

chine, W. F. Trader, notary public, Greene county, Ohio,
116 April 11, 1884.

That this identical model was made for the salesman who solicited orders for said machines for said corporation; that said machines were made and sold by said corporation each and every season until and including the season of 1880.

That he obtained letters patent of the United States No. 177,176, dated May 9th, 1876, for an improvement in horse hay-rakes, and

that said corporation, the Shawnee Agricultural Co., made and sold for the season of 1875 over two hundred rakes in all, in all respects corresponding with the drawings and specifications of said patent 177,176, and have made and sold said rakes and exhibited the same at fairs throughout the country every year thereafter and still continue to make said rakes; that all of said rakes contained a combined hand and foot lever precisely as shown in said patent, and that one of said rakes was shipped to and now is, as affiant believes, in the warehouse of Wm. C. Denison, Grand Rapids, Michigan; that said corn-planters and rakes made and sold as aforesaid were entirely successful operative machines.

Affiant says he is not related to any of the parties to the above-entitled suit and has no interest whatsoever in the result of the same.

J. F. TRADER.

Sworn to and subscribed before me this 11th day of April, 1884; and I certify that the interlineation and erasure on the opposite side of this page was made before the execution of this affidavit.

W. F. TRADER,
Notary Public, Greene County, O.

117 United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.

vs.

CHALLENGE CORN-PLANTER CO.

STATE OF INDIANA, }
County of Miami, } *ss:*

Samuel Wright, being duly sworn, deposes and says as follows to wit:

That he is sixty-one years old; that he resides at Peru, Indiana; that he has been for the last ten years engaged in the manufacture and sale of corn-planters; that he is the inventor and patentee of the corn-planter known as the Wright planter.

That during the year 1876 the firm of Wright and Eckert (said firm being composed of deponent and W. R. Eckart) contracted with the firm of D. E. McSherry and Co. and had manufactured over two hundred corn-planters, said planters being made at the shops of the said D. E. McSherry, at Dayton, Ohio; that all of said planters had a rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame and contained a hand lever and foot treadle adapted to be used in conjunction or independently for the purpose of raising or lowering the runners; that a large number of said planters were sold and went into practical use in the spring planting of 1877; that they were practical machines for the purpose designed and gave general satisfaction; that he has carefully examined the machine marked Exhibit Wright

Corn-Planter, 1876, Joseph D. Oates, notary public, Miami county, Indiana, May 14th, 1884, and recognizes it as one of the said planters made by the said D. E. McSherry & Co. for said Wright and Eckart.

That excepting the natural wear the said planter is in all
118 respects exactly the same as when made, excepting the rear end of the foot levers have been cut off where the foot pads were attached and the standards to which the driver's seat is attached have been shortened so as to lower the driver's seat a trifle. Neither of these changes, however, affect the principle or operation of the planter in any respect.

That he is not related to the parties to this controversy and has no interest whatever in the result.

SAM'L WRIGHT.

Sworn and subscribed before me this 14th day of May, A. D. 1884.

JOSEPH D. OATES, [SEAL.]
Notary Public.

In the Circuit Court of the United States for the Western District of Michigan, Southern Division.

THE FARMERS' FRIEND MANUFACTURING COMPANY

vs.

CHALLENGE CORN-PLANTER COMPANY.

STATE OF OHIO, }
County of Greene, } *ss:*

Samuel R. Collier, being duly sworn, deposes and says that he is a resident of the city — Xenia, in said county, and that he has resided in said city continuously since some time in 1872, and that he is fifty-five years of age; that in 1872 he was in the employ of the Shawnee Agricultural Company, and has continued in the employ of said company, as foreman of its shops, ever since 1872 and still is such foreman; that in the summer of 1878 he constructed a combined hand and foot lever for the corn-planters which said company was manufacturing, which was attached to such corn-planter;
119 that said corn-planters had a rear frame mounted or supported on wheels and a front runner frame pivoted or hinged to the main frame; that the foot lever and the hand lever had a rigid attachment and could be used and were used conjointly for forcing and locking the front runners into the ground and for raising and locking them out of the ground; that the operator could by his feet raise and lock the runners out of the ground or depress and lock said runners into the ground without the aid of his hands; that he could perform the same operation with his hands without the use of his feet, or he could — both hands and feet together; that a large quantity of said corn-planters so constructed were manufactured and sold and put into practical use by said company, and that

the same was a good and practical working machine and gave general satisfaction.

That he has seen a large number of said planters in operation and has seen the operator forcing the front runner frame into the ground by means of his foot.

SAMUEL R. COLLIER.

Subscribed and sworn to before me by the said Samuel R. Collier this 11th day of April, A. D. 1884.

W. F. TRADER,
Notary Public, Greene Co., O.

Endorsement: No. 789. U. S. circuit court, west. dist. Mich., S. D. In equity. Farmers' Friend M'f'g Co. *vs.* Challenge Corn-Planter Co. Def't's aff'ts on motion to dissolve. Filed May 15, 1884. H. M. Hinsdill, clerk. Stem & Peck and Edward Taggart, def't's sol'rs.

120 Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.
vs. } No. —.
THE CHALLENGE CORN-PLANTER CO.

The replication of The Farmers' Friend Manufacturing Company, complainant, to the answer of The Challenge Corn-Planter Company, defendant.

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

WOOD & BOYD,
EDWARD W. WITHEY,
Sol'rs for Comp'ts.

Endorsement: U. S. circuit court. In equity. No. 789. The Farmers' Friend M'f'g Co., complainant, *v.* The Challenge Corn-Planter Co., defendant. Replication. Filed May 31, 1884. H. M. Hinsdill, clerk. Wood & Boyd and Edward W. Withey, compl't's sol'rs.

121 United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.
vs.
THE CHALLENGE CORN-PLANTER CO.

You are required to produce Charles W. Trader, James F. Trader, and Samuel R. Collier at the hearing of the motion to dissolve the injunction herein for cross-examination on their affidavits; and, failing to do so, a motion will be made for a commission for the purpose or to suppress their affidavits.

Respectfully,

WOOD & BOYD AND
E. W. WITHEY,
Solicitors for Compl't.

To Mess. Stem & Peck and Edward Taggart, solicitors for def't.

STATE OF OHIO, } *ss:*
Hamilton County, }

I, John S. Roebuck, Jr., of Cincinnati, Ohio, make oath and say that I served Mr. Peck, of the firm of Stem & Peck, at his office, on the ninth day of June, 1884, with a true copy of the within notice.

JOHN S. ROEBUCK, JR.

Sworn to and subscribed before me this 10th day of June, 1884.

[SEAL.] ROBERT ZAHNER,
Notary Public, Ham. Co., O.

Endorsement: No. 789. U. S. circuit court. Farmers' F. M'f'g Co. *vs.* Challenge C. P. M'f'g Co. Notice. Filed June 12, 1884. John McQuewan, dep. clerk. Wood & Boyd.

122 United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.
vs.
THE CHALLENGE CORN-PLANTER CO.

STATE OF OHIO, } *ss:*
Greene County, }

William King, being first duly sworn, deposes and says as follows:

I live in Xenia, in said county; am 44 years old, and a carpenter by trade, in the employ of the Ohio Soldiers' and Sailors' Orphans' Home. I worked for the Shawnee Agricultural Company from the time the company was organized until January, 1881. During the corn-planter season I was engaged in putting up planters and rakes and am familiar with the different styles of corn-planters made by the company.

I have examined the model marked "Exhibit Trader and Collier Model, M. J. Hartley, notary public," now shown me, and recognize it as representing the frame-work and lever devices of planters made and sold by the Shawnee Agricultural Company.

This model as originally made and as I first saw it did not have the hand lever. I knew of the change at the time it was made and saw the model both before and after the change.

The corn-planters, as made by the Shawnee Agricultural Company up to and for the season of 1879, had the two foot treadles as shown in the model, but instead of the hand lever had two rock bars or auxiliary levers pivoted to the axle between the foot treadles, to which they were connected at the rear, and to each other in front by a cross-bar, so that by pressure of the feet on the cross-bar the runners could be depressed.

The change as shown by the model was made in 1879, and
123 I helped to put onto an old planter the first hand lever that was attached to a planter at the Shawnee Agricultural Co.'s works, and went with that planter to the field to test it, after which it was taken back to the shops and there remained until I left. Up to the time this experimental planter was made no other planter having a hand lever had been made by the Shawnee Agricultural Company; but during the fall and winter following planters having the hand lever as shown in said model were made for the next season's trade, and the model referred to correctly represents the lever devices and the frame of those machines which were made for the trade of 1880.

WM. H. KING.

Sworn to and subscribed by said William King, before me and in my presence, this 5th day of June, A. D. 1884.

[SEAL.] M. J. HARTLEY,
Notary Public, Greene County, Ohio.

Endorsement: No. 789. U. S. circuit court. F. F. M'f'g Co. *vs.* C. C. Planter Co. Aff't W. H. King. Filed June 12, 1884. John McQuewan, dep. clerk. Wood & Boyd.

124 United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.

vs.

CHALLENGE CORN-PLANTER CO.

STATE OF OHIO, } *ss:*
Greene County, }

Isaac B. Jones, of lawful age, being first duly sworn, deposes and saith: I am sixty-two years of age and a resident of Xenia, Greene county, Ohio. I am foreman of the carpenter shops of the Ohio Soldiers' and Sailors' Orphans' Home; for three or four years prior to

February, 1879, I was in the employ of the Shawnee Agricultural Company of Xenia, Ohio, as patent-maker. I left the employ of this company in February, 1879, and started a shop of my own, and I continued this until the fall of 1879, when I came to the Ohio Soldiers' and Sailors' Orphans' Home as foreman of the carpenter shop, which position I have held since; that while I was in the employ of the Shawnee Agricultural Company it manufactured corn-planters, the frame-work of which was the same as that shown in letters patent No. 176,098, granted to Trader & Collier April 11, 1876, and while there I made the model now shown to me as originally constructed and which I now mark Exhibit "Trader and Collier Model;" that as originally constructed said model had the levers and frame marked in the drawing of said patent "P P," "O K K," the same as the planters theretofore made by the company; that, after leaving the company and during the following summer, two models like the one described were brought to my shop by Mr. Collier for the purpose of having the parts P P, O K K removed and the hand lever with its attachments, as they now appear on said model exhibit, substituted. This work I did and said model exhibited is one of the two changed at that time; that while I
125 was in the employ of the Shawnee Agricultural Company no planter was made having a hand lever like that represented in the model or of any other character.

ISAAC B. JONES.

Sworn to and subscribed by Isaac B. Jones, before me and in my presence, this 27th day of May, A. D. 1884.

[SEAL.] M. J. HARTLEY,
Notary Public in and for Greene County, Ohio.

Endorsement: No. 789. U. S. circuit court. F. F. M'f'g Co. *vs.* C. C. Planter Co. Aff't of Jones. Filed June 12, 1884. John McQuewan, dep. clerk. Withey. Wood & Boyd.

126 Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

STATE OF OHIO, }
Montgomery County, } *ss:*

Benjamin Kuhns and James A. Marlay, of Dayton, Ohio, being duly sworn, severally make oath and say as follows: That they are officers of the corporation complainant; that Michael Runstetler, mentioned in the bill of complaint herein, was employed by the complainant in the fall of 1879 and remained in its employ continuously, as superintendent of its works, until last February, when he

died; that one of the first things said Runstetler did, after such employment, was to apply the invention in controversy to a corn-planter theretofore made by said company, he having seen such planter before and suggested the application of the invention, as they are informed and believe, prior to such employment; that during the fall of 1879 said company took orders for corn-planters containing said patented improvement, and made and shipped 1,300 for the spring planting the following year, and have made and sold them every season since, having made and sold in all over 21,000; that said Runstetler's device was the first simple treadle and hand lever attached combined for elevating and depressing ever attached to a corn-planter, as these deponents believe, and so popular did the planter become on account of this feature that other manufacturers have admitted the necessity of such a device in order to compete in the market, and many, like the defendant, have copied it
127 almost exactly, by means of which the complainant has been deprived of large gains and profits which it otherwise would have made and realized, and has been compelled to institute suits for its protection.

B. KUHNS.
J. A. MARLAY.

Sworn to by Benjamin Kuhns and James A. Marlay and by them subscribed in my presence this 28th day of May, A. D. 1884.

[SEAL.] HARRY H. PRINGLE,
Notary Public in and for Montgomery Co., Ohio.

United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

STATE OF OHIO, }
Montgomery County, } *ss:*

Andrew Runstetler, of Dayton, Ohio, being duly sworn, deposes and says that he is the patentee named in letters patent No. 116,493, bearing date of June 27th, 1871, for a combined corn-planter and cornstalk cutter, which have since been made and sold with a foot treadle, as shown in said patent; that he is the brother of Michael Runstetler, the inventor named in reissued letters patent No. 10155, now deceased, and for many years worked in the same shops with him and was familiar with his various and many inventions, with many of which deponent assisted; that during the fall of 1878 said Michael Runstetler made a hand lock lever and applied it to a corn-stalk cutter for the purpose of raising and lowering the frame which carried the cutters and of locking it in any desired position; that

during the following year and before he went into the em-
128 ploy of the complainant said Michael Runstetler illustrated and explained to this deponent his ideas about applying a hand lever to the complainant's planter so as to operate conjointly with the foot treadle as claimed in said reissue.

ANDREW RUNSTETLER.

Sworn to by Andrew Runstetler and by him subscribed in my presence this 28th day of May, A. D. 1884.

[SEAL.] HARRY H. PRINGLE,
Notary Public in and for Mont. Co., O.

Endorsement: No. 789. U. S. C. C. F. F. M'f'g Co. *vs.* C. C. P. Co. Aff't Kuhn & Marlay. Filed June 12, 1884. John McQuewan, dep. clerk. Withey. W. B.

129 United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

Benjamin Kuhns and James A. Marlay, of Dayton, Ohio, being duly sworn, severally make oath and say as follows:

That they are officers of the corporation complainant, and, having read copies of the affidavits of J. W. Trader and Samuel R. Collier made herein before W. F. Trader on the 11th day of April last, yesterday visited Xenia, Ohio, and, in company with Mr. Edward Boyd, had interviews with said Collier and C. W. Trader in the office of the Shawnee Agricultural Company.

The first interview was with Mr. Collier during the absence of Mr. Trader from the works.

The object of the visit was explained to Mr. Collier to be the ascertainment of any fact which would tend to a verification of the statements of his affidavit, to which he replied that he had not any data, but thought Mr. Trader could supply it; that he, Collier, was not certain when he got up the lever arrangement shown in the model, but that it was during the summer season and on an old planter which was never sold or taken away from the works; that after satisfying himself that it would work he took two models, one of which was that referred to in the Trader affidavits and the other the one he let us have, which is that referred to in the affidavit of Isaac B. Jones, sworn to before M. J. Hartley, in this cause, May 27th, 1884, and had the change made as sworn to by said Jones in said affidavit; that up to this time no planters had been made for sale, the old experimental one being the only one; that the two models, as changed, were then used by travelling salesmen, and planters containing the lever devices shown in them were made and sold for the spring planting of the following year.

130 Mr. Collier said that his only reason for thinking he had gotten up the device in 1878 was that they did not make any planters after 1880, as he thought, but if he was mistaken as to this and the fact was that they made some in 1881, then he would think that it was in the summer of 1879 that he got up the device.

After this Mr. C. W. Trader joined the party, and, the object of the visit having been made known to him, he expressed his willingness to aid in the investigation. First, he admitted the order as to seasons of the year in which the device was gotten up, the models changed for the use of the salesmen, and sales made, as stated by Mr. Collier.

We then asked Mr. Trader for the name of any person to whom a planter as changed had been sold prior to 1880, and in response he examined his sales books, but failed to find any such sale and could give us no such name.

In answer to a question as to how many of the changed planters had been sold in all Mr. Trader did not state any definite number, but both Mr. Trader and Mr. Collier stated that they had not made many, and Mr. Trader said they had made some in 1881 like those made the previous year, and a few of these which were left over were sold in 1882 and 1883, but none made after 1881, when they ceased to manufacture planters.

B. KUHNS.
J. A. MARLAY.

Sworn to by Benjamin Kuhns and James A. Marlay and by them subscribed in my presence this 28th day of May, A. D. 1884.

[SEAL.] HARRY H. PRINGLE,
Notary Public for Montgomery Co., O.

Endorsement: No. 789. U. S. C. C. F. F. M'f'g Co. *vs.* C. C. P. Co. Aff't Kuhns & Marlay. Filed June 12, 1884. John McQuewan, dep. clerk. Withey, Wood & Boyd.

131 Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

STATE OF OHIO, }
Montgomery County, } *ss:*

William K. Eckert, of the city of Dayton, in said county, being duly sworn, deposes and says that he was a member of the firm of Wright & Eckert, which did business at Dayton for a few years from about the fall of 1875; that D. E. McSherry & Co., of Dayton aforesaid, made over two hundred corn-planters for said firm of Wright & Eckert which contained foot treadles for elevating the runner

frame and a separate hand lever connected to the front frame by a chain which could be adjusted to allow the runners to be forced into the ground by the driver pressing on foot plates on the front frame, but on none of these could either the treadles or hand lever be used for forcing the runners into the ground, the connection of each to the front frame being a chain. The planters were made by D. E. McSherry & Co. during the year 1877, and no other kind was made by them for us.

That in 1878 said firm of Wright and Eckert had about one thousand corn-planters made by John Dodds, of Dayton aforesaid, about half of which were sold that year and the balance during the next two years, only one lot having been made by Mr. Dodds and one by McSherry & Co.

In the planters made by Dodds the hand lever was located in front of the seat standard instead of at one side of the machine, as in those made by McSherry & Co., but, to the best of my recollection and belief, the hand lever on all these was connected to the front frame by a chain and for the same purpose as in those made
132 by McSherry & Co., and I have no knowledge or recollection of any of said hand levers having been connected to the front frame by a bar or in any way in which the lever could be used for holding the runners in the ground.

W. K. ECKERT.

Sworn to before me by the said William K. Eckert and by him subscribed in my presence this 20th day of May, A. D. 1884.

[SEAL.] GEORGE O. WARRINGTON,
Notary Public in and for Montgomery County, Ohio.

Endorsement: U. S. C. C. F. F. M'f'g Co. *vs.* C. C. P. Co. No. 789. Aff't Eckert. Filed June 12, 1884. John McQuewan, dep. clerk. Withey, Wood & Boyd.

133 Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

STATE OF OHIO, } *ss:*
Montgomery County, }

Sebastian Ritty, of Dayton, in said county, being duly affirmed, deposes and says that he is the Sebastian Ritty who made an affidavit in this cause before Quincy Corwin on the 22nd day of April last, and being now asked to state more fully how the corn-planters therein mentioned were made says that they were all made during one season and for the season trade of 1878, but were not all sold until 1882, I think; that as first made the hand lever was connected to the front frame by a chain and in this way were sold, but complaints being

made by farmers that there was no means of holding the runners in the ground some time after, and I think from one to two years, the chain was removed from some of said planters and a link substituted, as shown in the planter referred to in my said affidavit, but just when the change was made in that particular planter I have no means of knowing at present. The link was substituted for the chain on very few of the planters, not more than thirty-five or forty-five, and not all at the same time, but at different times, and not all in the same year, but in different years.

SEBASTIAN RITTY.

Affirmed to before me by the said Sebastian Ritty and by him subscribed in my presence this 23d day of May, A. D. 1884.

[SEAL.] GEORGE O. WARRINGTON,
Notary Public in and for Montgomery Co., Ohio.

Endorsement: No. 789. U. S. C. C. F. F. M'f'g Co. *vs.* C. C. P' Co. Aff't of Ritty. Filed June 12, 1884. John McQuewan, dep· clerk.

134 Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.
vs.
THE CHALLENGE CORN-PLANTER CO.

STATE OF OHIO, }
Montgomery County, } *ss:*

Joshua C. Norris, of the city of Dayton, Ohio, being first duly sworn, deposes and says that he began working for John Dodds in 1871 and has worked for him ever since that time, excepting a few weeks in the summer season, when the shop was closed; that during the season of 1878 John Dodds built for Wright and Eckert one thousand corn-planters; that he helped get out the wood-work for said planters and helped put them together; that said corn-planters made by said John Dodds contained foot treadles for elevating the runner frame and a separate hand lever connected to the front frame by a chain which could be adjusted to allow the runners to be forced into the ground by the driver pressing on foot plates on front frame, but on none of these could either the treadles or hand lever be used for forcing the runner into the ground, the connection of each to the front frame being a chain; that in 1879 or 1880 there were some links put on in place of chains, as the planters were not all sold during that year, there still being some left unsold until 1882.

JOSHUA C. NORRIS.

Sworn to before me by Joshua C. Norris and by him subscribed in my presence this 23rd day of May, A. D. 1884.

GEORGE O. WARRINGTON,
Notary Public in and for Montgomery County, Ohio.

Endorsement: No. 789. U. S. C. C. F. F. M'f'g Co. *vs.* C. C. P. Co. Aff't Norris. Filed June 12, 1884. John McQuewan, dep. clerk. Withey, Wood & Boyd.

135 *Orders.*

THE UNITED STATES OF AMERICA, *Western District of Michigan, Southern Division,* } *ss:*

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 12 day of June, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and eighth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant, *vs.* THE CHALLENGE CORN-PLANTER COMPANY, Defendant. } No. 789.

This cause came on to be heard upon motion of defendants to dissolve the injunction heretofore issued herein, and after hearing counsel for the respective parties the court took the same into consideration.

136 WESTERN DISTRICT OF MICHIGAN, *County of Kent,* } *ss:*

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING CO.

vs.

CHALLENGE CORN-PLANTER COMPANY.

Arthur C. Denison, of said county, being duly sworn, deposes and says that he is a clerk in the office of Edward Taggart, one of the solicitors for the defendant in the above cause; that said cause is at issue by the filing of replication therein on the 31st day of May, 1884, and that a stipulation has been made in said cause by the solicitors for the respective parties that the testimony to be taken therein shall be taken orally by question and answer, and before any notary public or other duly authorized officer for the taking of testimony.

ARTHUR C. DENISON.

Subscribed and sworn to before me this 7th day of July, 1884.
FRED. W. STEVENS,
Notary Public, Kent Co., Mich.

[Endorsed:] No. 789. U. S. circuit court. F. F. M'f'g Co. *vs.* Challenge C. P. Co. Affidavit of A. C. Denison on motion for order fixing time. Filed July 7, 1884. H. M. Hinsdill, clerk. Copy.

137 In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING COMPANY
vs.
CHALLENGE CORN-PLANTER COMPANY.

And now comes the said defendant, by Stem & Peck and Edward Taggart, its solicitors, and moves the court now here for an order pursuant to rule 67, as amended December, 1869, assigning a time within which the complainant shall take its evidence in support of the bill, and a time thereafter within which the defendant shall take its evidence in defense, and a time thereafter within which the complainant shall take its evidence in reply.

This motion is based on the affidavit of A. C. Denison this day filed herein, and on the records and files of said cause.

Dated July 7, 1884.

STEM & PECK AND
EDWARD TAGGART,
Def't's Sol'rs.

138 *Judge Withey's Opinion on Motion to Dissolve Injunction.*

In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUF'G CO., Complainant,
vs.
THE CHALLENGE CORN-PLANTER CO., Defendant.

This motion is by the defendant to set aside an injunction heretofore granted restraining the defendant from making and vending a certain corn-planter that was adjudged to be an infringement of the first four claims of reissued letters patent No. 10155, assigned by the inventor, Michael Runstetler, to the complainant, the validity of which had been twice decreed upon final hearing, once in this court and once in the United States circuit court at Chicago. Defendant's motion to dissolve was entered without leave of the court, and is based on the mere fact that the defendant has adduced additional evidence. The questions raised by this motion are essentially the same as those presented, argued, and decided under the motion

for the injunction. The additional evidence is altogether cumulative, no part of which has arisen since the injunction was granted, and there is no satisfactory showing that reasonable diligence was used to discover and produce such additional evidence upon the hearing of the former motion.

I intimated when this motion was called up that the course pursued was not justified by any practice known to the court,
139 but I consented to hear the evidence to enable me to determine whether a manifest injustice had been done to the defendant in granting the restraining order or injunction. My reasons for now denying this motion briefly are as follows:

First. This court has twice decided that the machine made and vended by the defendant is an infringement of the first four claims of reissued letters patent owned by the complainant. The first decision was in a case by this complainant against the Waite Manufacturing Co., on final hearing, after hearing the arguments for counsel for both parties, and when the circuit and district judges were present and concurred in the decree rendered, perpetually enjoining the defendant therein from making, using, or vending said infringing machine. The Waite Manufacturing Co. was dissolved, and the defendant herein was organized, and has entered upon the manufacture and sale of the same machine substantially as the Waite Manufacturing Co. was enjoined from making and selling. This defendant is located at the same place, and, as I understand, succeeded the Waite Manufacturing Co. in its business, many of the stockholders and some of the officers in the present company having been stockholders and officers in the former company.

The second decision, holding that said corn-planter infringed the rights of the complainant, was, in this case, on the motion for the injunction which the defendant now asks to have dissolved.

The court is asked to reverse, in effect, such former decree, and the adjudication heretofore made in this case granting the motion for an injunction, and for the sole reason that the defendant has now produced additional evidence. This additional evidence is made up of affidavits, some corn-planters, and two models. Neither the machines nor the models prove anything as to the state of the art at the time of the invention by Runstetler, except as the affidavits are sufficient to show that those machines were known and used at a time prior. The complainant procured and read affidavits, some of them made by the same persons who swore to affidavits used by the defendant, the effect of which, as evidenced, is
140 to show, at least, strong doubt whether such machine and models as were exhibited on the hearing of this motion were in existence, known, and used at the time of said invention, or at any time prior thereto.

At neither of the previous hearings on the question of infringement has want of novelty been proved, and it would be very uneven and unstable justice to now, upon mere *ex parte* affidavits, reverse the former adjudications of the court overruling the objection of want of novelty.

In Hussey *vs.* Whitely, 2 Fisher's Cases, 120, p. 127, which was a motion to dissolve an injunction that had been granted restraining the infringement of a patented improvement in reaping machines, Leavitt, Judge, says: "As to the additional evidence, it is not offered as proving any fact not in issue and controverted on the original hearing, and is, therefore, altogether cumulative in its character, and affords no sufficient grounds for setting aside the order then made."

In Woodworth *vs.* Rogers, 3 W. & M., 135, cited by Judge Leavitt, Mr. Justice Woodbury held as follows: "The main point on a motion to dissolve an injunction is not whether an injunction should be imposed at all, for that has been already done, and after a full hearing, and, till the contrary is shown, it is to be presumed it was done rightly. The burden is on the respondent to overcome that presumption. It is open to be overcome by new matter, or evidence arising since the injunction was imposed, though very seldom by matter then existing which the party then neglected to present to the consideration of the court.

Second. In favor of the validity of the reissued letters patent are the presumptions arising from the letters themselves from the decree of the United States circuit in Chicago, the decree of this court in the case mentioned against the Waite Manufacturing Co., and the adjudication in this cause, on the motion of the complainant, granting an injunction against the defendant. The presumption arising from such enumerated considerations ought not to be set aside by such preliminary inquiries and evidence as are presented
141 in a mere motion and upon *ex parte* evidence, unless the aspect of the case has been substantially changed by evidence which is not merely cumulative and which was not adducible at any former stage of the case.

The evidence on this motion does not clearly or conclusively impeach the Runstetler patent, on the ground that he was not the first and original inventor, nor does it justify a decision overturning the presumption arising from the letters and the judgments referred to affirming that he was such first and original inventor.

The motion presents matters proper to be considered and decided upon the final hearing of the cause, when all the evidence and proofs shall have been adduced and after opportunity has been afforded to examine and cross-examine the witnesses. The injunction cannot be dissolved without finding that the additional evidence shows clearly prior knowledge and use of the patented improvements, and such finding is not justified. The motion to dissolve is therefore denied with the usual costs.

S. L. WITHEY, *Judge, etc.*

Filed July 12, A. D. 1884.

H. M. HINSDILL, *Clerk.*

142 *Orders.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss:*

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 12 day of July, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE FARMERS' FRIEND MAN'F'G COMPANY, Complainant,
vs.
THE CHALLENGE CORN-PLANTER COMPANY, Defendant. } No. 789.

This cause having been heretofore argued and submitted on motion to dissolve the injunction heretofore issued herein, and the court, after due consideration thereupon had and deliberation thereon—

Ordered, That said motion be, and the same is hereby, denied, with costs, including a solicitor's fee of ten dollars.

143 *Orders.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss:*

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 12 day of July, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE FARMERS' FRIEND MAN'F'G COMPANY, Complainant,
vs.
THE CHALLENGE CORN-PLANTER COMPANY, Defendant. } No. 789.

In this cause, on reading and filing the affidavit of Arthur C. Dennison, showing that said cause is at issue by the filing of replication, and that the testimony in this cause is to be taken orally, and, on motion of Edward Taggart, one of defendant's solicitors—

It is ordered that the said complainant take its testimony in support of the bill herein within ten days after this date; that the defendant take its testimony in defence within forty days after the

expiration of complainant's time as above limited, and the complainant its testimony in reply within forty days after defendant's proofs are closed.

144 STATE OF MICHIGAN, } ss:
County of Kent, }

Fred. W. Stevens, being duly sworn, deposes and says that, on the 19th day of August, 1884, he served a true copy of the annexed petition on Wood & Boyd, solicitors for the complainant in said cause, by depositing the same in the post office at Grand Rapids, Mich., enclosed in an envelope, addressed to "Mess. Wood & Boyd, cor. Fourth & Main Sts., Cincinnati, Ohio," their proper address, postage thereon being fully prepaid.

FRED. W. STEVENS.

Subscribed and sworn to before me this 20th day of August, 1884.
ARTHUR C. DENISON,
Notary Public, Kent Co., Mich.

145 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,

vs.

CHALLENGE CORN-PLANTER COMPANY, Defendant.

To the judges of the circuit court of the United States for the western district of Michigan, in equity:

Your petitioner, the Challenge Corn-Planter Company, of Grand Haven, Michigan, respectfully shows that it is the above-named defendant; that on the 1st day of April, A. D. 1884, this court, by its order, enjoined your petitioner from making or selling corn-planters constructed in accordance with the claims of complainant's reissued patent No. 10155, but further ordered that your petitioner might sell such corn-planters as it had on hand, under contract of sale, upon filing a bond as in said order specified; that a bond in compliance with the terms of such order was thereupon and on the 11th day of April filed and approved, and your petitioner attempted to proceed with the sale of such machines; that very soon after the making of such order complainant printed or caused to be printed a large number of circulars, of which a copy is hereto attached, marked Exhibit "A," and made a part of this petition; and these circulars were circulated broadcast among the agricultural dealers of the Western States and were received by many of your petitioner's customers and by those who had contracted to purchase said machines. In consequence of the statements contained in said circulars many of
146 your petitioner's customers became alarmed and refused to complete their contracts of purchase and receive said machines; wherefore the same were returned to your petitioner or

remained in its warehouse unshipped; and your petitioner now has on hand at its warehouse about 500 completed corn-planters, all of which it supposed and expected it would sell under the previous order of this court, and all of which are among those scheduled in the inventory attached to said bond and duly filed in this cause.

Your petitioner further shows that at the time of the making by this court of the said injunction order it had in its factory, in process of construction and nearly completed, about 500 other planters, and that upon the making of said order work upon such planters was stopped and they still remain uncompleted.

That your petitioner is a corporation organized about Aug. 14, 1883, and has invested in its factory and machinery and necessary apparatus and material, at Grand Haven, a cash capital of $75,000, is engaged principally in the manufacture of corn-planters, and employed in its factory prior to such injunction order from 50 to 75 men; that this, the season of 1884, was the first season your petitioner had sold planters to the trade, and it had invested large sums of money and through its agents been to great labor and expense in building up a trade for itself, and had thereby secured a large number of orders from dealers and commission men throughout the Western States, and expected, as is the custom, to continue to furnish its planters to such dealers for successive seasons, but that, because of said injunction order, your petitioner will not be able so to do unless the same be modified; that the planters already sold by your petitioner to such dealers were largely sold on credit, and under such circumstances that, on account of your petitioner's
147 inability to continue to furnish planters, said dealers keep back and refuse to pay large sums owing your petitioner for the planters already sold, and that there is now due and owing your petitioner from its customers for such planters, and in a great part withheld for the reasons aforesaid, about $25,000.00.

Your petitioner further shows that, in order to secure orders for the season of 1885 and to prevent irreparable injury to its business and the loss of the money already invested in establishing its trade which would ensue from a failure by your petitioners to be able to supply the trade with planters during such season and from a transfer of its custom to other manufactories, it is necessary that your petitioner should exhibit its planters at agricultural exhibitions and fairs during the present season and keep its planters in the market ready to supply to those desiring them; and your petitioner believes that if it is allowed to sell and furnish to its customers the said planters now in its warehouse and complete and sell those in its factory unfinished as aforesaid—about one thousand planters in all, and worth about $25,000.00—it will be able as well to collect the money now due it is as aforesaid as to retain its customers until a final decree in this cause, and therefore prevent great and irreparable injury to its business in the event of the dissolution of the injunction on such final decree.

Your petitioner therefore prays that the injunction now in force may be so modified as to allow your petitioner to complete the manufacture of said unfinished planters and to sell the same, as well

as the completed planters in its warerooms as aforesaid, to the trade in the usual manner; and it hereby offers to furnish a bond to the complainant, with such sureties and in such amount as the
148 court shall direct, if the prayer of this petition be granted, conditioned to pay all damages that may result to complainant by such sale.

And your petitioner will ever pray.

CHALLENGE CORN-PLANTER CO.,
[SEAL.] By EDWIN G. BELL, *Pres't.*

STATE OF MICHIGAN, } ss:
County of Kent, }

Edwin G. Bell, of Grand Haven, Michigan, being duly sworn, deposes and says that he is president of the Challenge Corn-Planter Company, the above-named petitioner, and caused the corporate seal thereof to be affixed thereto; that he has heard read the foregoing petition and knows the contents thereof, and that the same is true in substance and in fact.

EDWIN G. BELL.

Subscribed and sworn to before me this 11th day of August, 1884.
FRED. W. STEVENS,
Notary Public, Kent Co., Mich.

EDWARD TAGGART AND
STEM & PECK,
Sol'rs for Def't.

[Endorsed:] No. 789. U. S. circuit court. Farmers' Friend M'f'g Co. *vs.* Challenge Corn-P. Co. Petition to modify injunction. Filed Aug. 19, 1884. Henry M. Hinsdill, clerk, by Chester B. Hinsdill, deputy. Copy.

149 STATE OF MICHIGAN, } ss:
County of Kent, }

Fred. W. Stevens, being duly sworn, deposes and says that on the 19th day of August, 1884, he served a true copy of the annexed order to show cause on Wood and Boyd, solicitors for the complainant in said cause, by depositing the same in the post office at Grand Rapids, Mich., enclosed in an envelope, addressed to "Messrs. Wood & Boyd, cor. Fourth & Main Sts., Cincinnati, Ohio," their proper address, postage thereon being fully prepaid.

FRED. W. STEVENS.

Subscribed and sworn to before me this 20th day of August, 1884.
ARTHUR C. DENNISON,
Notary Public, Kent Co., Mich.

150 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING COMPANY, Compl't,

vs.

CHALLENGE CORN-PLANTER COMPANY, Def't.

In this cause, on reading and filing the verified petition of the said defendant, showing, among other things, that by an order of this court made on the 1st day of April, 1884, the said defendant was enjoined from making or selling corn-planters constructed in accordance with the claims of complainant's reissued letters patent No. 10155, but were permitted to sell such corn-planters as it had on hand under contract of sale upon filing a bond; that said bond was therefore filed and approved; that soon after the making of said injunction order complainant caused to be circulated among the defendant's customers printed circulars, in consequence of which
151 said customers were alarmed and refused to complete their contracts of purchase.

That defendant now has on hand at its warehouse about 500 completed corn-planters, all of which it expected to sell under the previous order of this court, and all which are among those scheduled in the inventory heretofore filed herein.

That at the time of making said injunction order defendant had in its factory, in process of construction and nearly completed, about 500 other planters, which still remain uncompleted; that defendant has invested in its business a cash capital of $75,000, and prior to said order employed from 50 to 75 men; that the season of 1884 was the first season it had sold planters, and it had been to great labor and expense in building up a trade, by which it had secured a large number of orders and expected to furnish its planters to dealers for successive seasons, but that because of said order it will not be able so to do unless said order be modified.

That the planters already sold by defendant were largely sold on credit, and on account of its inability to continue to furnish
152 planters dealers refuse to pay large sums owing to defendant for planters already sold, and that there is now due it from customers about $25,000; that in order to secure orders for the season of 1885 and to prevent irreparable injury to its business it is necessary that defendant should exhibit its planters at fairs during the present season and keep its planters on the market.

That if allowed to sell the planters now in its warehouse and complete and sell those in its factory unfinished—about 1,000 planters in all—it will be able to collect the money now due it and retain its customers until a final decree in this cause, and praying that the injunctions now in force be so modified as to allow defendant to complete said unfinished planters and to sell the same, as well as the completed planters, to the trade in the usual manner, and offering such a bond as the court shall direct conditioned to pay all

damages occasioned by said sales; and on motion of Stem and Peck and Edward Taggart, solicitors for said defendant—

153 It is ordered that the said complainant show cause before this court on the second day of September, 1884, at ten o'clock in the forenoon of that day, why *why* the prayer of said petition should not be granted; and it is further ordered that a copy of this order, together with a copy of said petition, be served upon the solicitors for said complainant at least twelve days before said second day of September, 1884.

(Signed) S. L. WITHEY,
Dist. Judge.

(Indorsed on back as follows:) U. S. circuit court, west. dist. Mich., S. D. In equity. Farmers' Friend M'f'g Co. *vs.* Challenge Corn-Planter Co. Order to show cause. Filed August 19, '84. Henry M. Hinsdill, clerk, per C. B. H., deputy.

154 *Orders.*

THE UNITED STATES OF AMERICA, }
Western District of Michigan, Southern Division, } *ss:*

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 19 day of August, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,
vs.
THE CHALLENGE CORN-PLANTER COMPANY, Defendant. } No. 789.

On motion of Edward Taggart, Esq., ordered that the depositions heretofore received and filed herein on the 24th day of July and 12th day of August, 1884, be, and the same are hereby, opened.

155 STATE OF MICHIGAN, }
County of Ottawa, } *ss:*

Circuit Court of the United States, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING CO.
vs.
CHALLENGE CORN-PLANTER CO.

Levi Scofield, being duly sworn, deposes and says as follows: That he resides at Grand Haven, Michigan; is 58 years of age, and

is superintendent of The Challenge Corn-Planter Company, defendant; that he was authorized and directed by said Challenge Corn-Planter Company to take personal charge of the conduct of the above-entitled suit, and particularly to hunt up and investigate the defenses of prior public use and sale of machines embodying the invention claimed in the patent sued on; that he used the utmost diligence in travelling through Indiana and Ohio, and discovered, after a long and arduous search, that corn-planters embodying the alleged Runstetler invention were made at Xenia, Ohio; at Springfield, Ohio; at Dayton, Ohio, and at Troy, Ohio, prior to the alleged invention of the said Runstetler; that the manufacture, use, and sale of these machines was set up in the answer of the defendant filed in this cause, but that, although he had used the utmost diligence, he had not discovered the names and addresses of all the persons to whom such manufacture and use was known, and did not discover their names and addresses until the taking of testimony as to such manufacture and use was actually begun; that the testimony of all the persons, excepting Joseph Cogan, whose names have been set up in the motion for leave to amend the answer, has been taken, and that complainant's counsel, Mr.
156 Boyd, was present at the taking of all of said testimony and cross-examined the witnesses; that he believes that this amendment to defendant's answer is necessary and essential to a complete defense, and that the testimony of these witnesses and said Joseph Cogan is very material, and that said amendment is not sought for purpose of delay, and is not a matter of surprise to the complainant.

LEVI SCOFIELD.

Subscribed and sworn to before me this 23rd day of Aug., 1884.
[SEAL.] SILAS M. WRIGHT,
Notary Public, Ottawa Co., Mich.

[Endorsed:] No. 789. Farmers' Friend M'f'g Co. *vs.* Challenge Corn-P. Co. Aff't of Levi Scofield on motion for leave to amend answer. Filed August 23, '84. Henry M. Hinsdill, clerk. Copy.

157 Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

FARMERS' FRIEND M'F'G CO. *vs.* CHALLENGE CORN-PLANTER CO.

And now comes the said defendant, by Stem & Peck and Edward Taggart, its solicitors, and moves the court for leave to amend its answer in the following particular by adding thereto the following:

This defendant avers, upon information and belief, that the said alleged improvements were, prior to the alleged invention thereof by the said Rumstetler, known to and publicly used by the following-named persons at the following-named places, to wit:

At New Holland, Pickaway county, Ohio, by James C. Vlerborne, who now resides and may be found at said New Holland; on the

farm of Robert W. Vincent, in Marion township, Fayette county, Ohio, by Robert W. Vincent, who now resides and may be
158 found at said Marion township; by James C. Vlerborne aforesaid; by Samuel R. Collier, who now resides and may be found at Xenia, Ohio, and by William Shaffer, who now resides and may be found in —— township, Fayette county, Ohio, and by Joseph Cogan, who now resides in Jackson county, Ohio; at Xenia, Greene county, Ohio, by C. W. Trader, Thomas J. Sterling, Seth A. White, John P. Beacham, and Robert Cannon, all of whom now reside and may be found at said Xenia; also at said Xenia by Calvin R. Phoebus, who now resides and may be found at Dayton, Ohio; by H. H. Rhodes, who now resides and — be found at Dayton, Ohio, and by John B. Lough, who now resides and may be found at Fairfield, Greene county, Ohio; at Troy, Miami county, Ohio, by John Kelly, who now resides and may be found at said Troy; at Dayton, Ohio, by Edward Brenneman and Orion Dodds, who now reside and may be found at said Dayton, Ohio; in Madison township, Butler
159 county, Ohio, by Samuel L. Banker, who now resides and may be found in said Madison township, Butler county, Ohio; at Springfield, Ohio, by Jonathan N. Evans, Lewis C. Evans, and James Nelson, all of whom now reside and may be found at said Springfield, Ohio; on the farm of William T. Haley, in Springfield township, Clarke county, Ohio, by William T. Haley, who now resides in said Springfield township; by James S. Haley, who now resides and may be found in Greene township, Clarke county, Ohio; by Charles B. Slater, who now resides and may be found in Springfield township, Clarke Co., Ohio, and by Austin C. Evans, who now resides and may be found at Springfield, Ohio.

This motion is based on the affidavit of Levi Scofield this day filed in said cause and on the records and files in said cause.

Dated August 23d, A. D. 1884.

STEM & PECK AND
EDWARD TAGGART,
Def't's Sol'rs.

160 STATE OF MICHIGAN, } ss:
County of Kent, }

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING CO., Complainant,

vs.

CHALLENGE CORN-PLANTER COMPANY, Defendant.

Levi Scofield, of the city of Grand Haven, in the county of Ottawa and State of Michigan, being duly sworn, deposes and says that he is a stockholder and officer of the above-named defendant, and has had since the organization of the said company and still has the charge of the manufacturing department thereof; that said defendant has now on hand, as near as he can estimate the same, five hundred corn-planters in an unfinished condition, designed to

be put up into the planter known as Challenge corn-planter; that the wood-work is cut out, dressed, and primed, and has mortices all made and holes bored ready to put up into a machine, except a few of the seat-users or supports, which are not completed; that the castings are all made ready for use, unless there may be a very few pieces of minor parts to be supplied for evening-up the five hundred; that all there remains to be done is to put the parts together and paint them to make complete planters.

And deponent says it is impossible, as he believes, for said company to alter said machines and construct a corn-planter differing from the corn-planter heretofore made without great loss and damage to said defendant; that the parts all being constructed for use a considerable portion of the castings would be entirely
161 useless on a machine of a different pattern; that an alteration of any one part would necessitate such alterations in other parts as to render a large portion of the material now completed valueless.

LEVI SCOFIELD.

Subscribed and sworn to before me this 28th day of August, 1884.
FRED. W. STEVENS,
Notary Public, Kent Co., Mich.

162 *Orders.*

THE UNITED STATES OF AMERICA, } *ss:*
Western District of Michigan, Southern Division, }

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 28 day of August, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant, *vs.* THE CHALLENGE CORN-PLANTER COMPANY, Defendant. } No. 789.

In this cause, on reading and filing the affidavit of Levi Schofield and on motion of Edward Taggart and Stem & Peck, solicitors for said defendant, and after hearing counsel for the respective parties upon the argument of said motion—

It is ordered that the said defendant be, and it is hereby, allowed to amend its answer now on file in this cause by adding thereto the following:

The defendant avers, upon information and belief, that the said alleged improvements were, prior to the alleged invention thereof

by the said Rumstetler, known to and publicly used by the
163 following-named persons at the following-named places, to wit:

At New Holland, Pickaway county, Ohio, by James C. Vlerbourne, who now resides and may be found at said New Holland; on the farm of Robert W. Vincent, in Marion township, Fayette county, Ohio, by Robert W. Vincent, who now resides and may be found at said Marion township; by James Vlerbourne aforesaid; by Samuel R. Collier, who now resides and may be found at Xenia, Ohio; by William Shaffer, who now resides and may be found in —— township, Fayette county, Ohio, and by Joseph Cogan, who now resides in Jackson county, Ohio; at Xenia, Greene county, Ohio, by C. W. Trader, Thomas J. Sterling, Seth A. White, John P. Beacham, and Robert Cannon, all of whom now reside and may be found at said Xenia; also at said Xenia by Calvin R. Phoebus, who now resides and may be found at Dayton, Ohio; by H. H. Rhodes, who now resides and may be found at Springfield, Ohio, and by John B. Lough, who now resides and may be found at Fairfield, Greene county, Ohio; at Troy, Miami county, Ohio, by John Kelley, who now resides and may be found
164 at said Troy; at Dayton, Ohio, by Edward Brenneman and Orion Dodds, who now reside and may be found at said Dayton, Ohio; in Madison township, Butler county, Ohio, by Samuel L. Banker, who now resides and may be found in said Madison township, Butler county, Ohio; at Springfield, Ohio, by Jonathan N. Evans and Lewis C. Evans, who now reside and may be found at said Springfield, Ohio; on the farm of William T. Haley, in Springfield township, Clarke county, Ohio, by William T. Haley, who now resides in said Springfield township; by James S. Haley, who now resides and may be found in Greene township, Clarke county, Ohio; by Charles B. Slater, who now resides and may be found in Springfield township, Clarke county, Ohio, and by Austin S. Evans, who now resides and may be found at Springfield, Ohio; and that the said defendant forthwith file an engrossed copy of said amendment and serve on complainant's solicitor a copy of the same; that the said amendment, when so filed, be considered as made *nunc pro tunc*
, and in all respects the same as if the matter therein con-
165 tained had been contained in the original answer; that the replication now on file stand as the replication to the said amended answer, and that the testimony of the witnesses named in said amendment who have already testified stand and be read at the hearing with the same force and effect as though their names had been included in the original answer.

166 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO., Complainant,

vs.

CHALLENGE CORN-PLANTER CO., Defendant.

James A. Marlay, being duly sworn, says that he is 48 years of age; that he is vice-president of the complainant company; that for seven seasons past he has had charge of the selling of the corn-planters manufactured by said company; that he has read a copy of defendant's petition herein filed and the order to show cause why the injunction hereinbefore granted should be modified, said order being returnable on Sept. 2d, 1884. He says that in his opinion it is not true that defendant cannot sell its corn-planter without the use of the hand lever, in combination with the foot lever, as embodied in the Challenge corn-planter, the manufacture of which has been enjoined by this court.

Affiant says that if defendant should omit the hand lever found on said planters they would be in condition for sale in the market and would be as good planters in respect to the elevating and depressing mechanism as many other styles of corn-planters now made and sold annually.

Affiant says that George W. Brown, of Galesburg, Ill., the Vandiver Corn-Planter Company of Quincy, Ill., and James Selby, of Peoria, Ill., each makes and sells annually large numbers of corn-planters having no hand levers, using foot levers only for elevating and depressing the runner frame, and that various other corn-
167 planters are made and sold each year without using the infringing device.

Affiant further says that complainant has made a specialty of its patented corn-planters, and complainant and its licensees have facilities to supply all the demands for this kind of corn-planter; that complainant's trade was seriously interfered with during the last season by defendant and other infringers; that complainant's good will and rights are injured by the advertisement and sale of defendant's corn-planters; that the peculiar style of corn-planter embodied in complainant's patent meets with great favor, and that complainant's trade and profits are seriously injured by reason of defendant making and selling planters of the same kind.

Affiant says that if the defendant should omit the hand lever, which could be done with little or no expense, or return to the use of the lifting device used by its predecessor, the Wait M'f'g Co., shown in the Schofield patents, which defendant claims to own or control, and use the same diligence as said Brown, the Vandiver Corn-Planter Company, and Selby, it could sell its planters as readily as other manufacturers who do not employ a hand lever, although not so readily as with the hand lever; but this, affiant submits, the defendant has no right to make or sell.

Affiant says that it is not true that agents will not buy goods unless they can obtain a promise to sell the same goods in succeeding years; that it is the custom of manufacturers to contract with agents for one season only at any one time; that it rarely happens that corn-planters are promised to agents for more than one season's trade, for dealers, as a rule, prefer not to contract for planters for season ensuing until they have seen the sample planters of other manufacturers and have a chance to examine them with reference to improvements and prices.

Affiant further says that it is the custom of the trade to
168 settle with agents for the past season before contracting for the following season, and he does not believe that responsible dealers would refuse to pay for planters already sold on the ground that they could not obtain the same planters the ensuing season.

Affiant says that the Challenge corn-planter is considered by the trade to be a practical copy of complainant's planter in the use of the lifting and depressing devices, and that it would suffer great damages in loss of trade and in price of machines if defendant's prayer is granted.

Affiant further says that the annexed circular was largely published by the defendant.

JAMES A. MARLAY.

Subscribed and sworn to before me this 28th day of August, A. D. 1884.

[SEAL.] HENRY M. HINSDILL,
Clerk Circuit Court,
By CHESTER B. HINSDILL, *Deputy.*

[Endorsed:] No. 789. U. S. circuit court. Farmers' Friend M'f'g Co. *vs.* Challenge Corn P. Co. Affidavit of J. A. Marlay. Filed Aug. 28, 1884. H. M. Hinsdill, clerk. Copy.

169 Circuit Court of the United States, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING CO.

vs.

CHALLENGE CORN-PLANTER CO.

DATED AUG. 29, 1884.

And now comes the defendant, by leave of court, and amends its answer by adding thereto the following:

This defendant avers, upon information and belief, that the said alleged improvements were, prior to the alleged invention thereof by said Runstetler known to and publicly used by the following-named persons at the following-named places, to wit:

At New Holland, Pickaway county, Ohio, by James C. Vlereborne, who now resides and may be found at said New Holland; on the farm of Robert W. Vincent, in Marion township, Fayette county,

Ohio, by Robert W. Vincent, who now resides and may be found at said Marion township; by James C. Vlereborne, aforesaid; by Samuel R. Collier, who now resides and may be found at Xenia, Ohio, and by William Shaffer, who now resides and may be found in —— township, Fayette county, Ohio; at Xenia, Greene county, Ohio, by C. W. Trader, Thomas J. Sterling, Seth A. White, John P. Beacham, and Robert Cannon, all of whom now reside and may be found at said Xenia; also at said Xenia by Calvin R. Phebus, who now resides and may be found at Dayton, Ohio; by H. H. Rhodes, who now resides and may be found at Springfield, Ohio, and by John B. Lough, who now resides and may be found at Fairfield, Greene county, Ohio; at Troy, Miami county, Ohio, by John Kelly, who now resides and may be found at said Troy; at Dayton, Ohio,
by Edward Brenneman and Orion Dodds, who now reside
170 and may be found at said Dayton, Ohio; in Madison township, Butler county, Ohio, by Samuel L. Barker, who now resides and may be found in said Madison township, Butler county, Ohio; at Springfield, Ohio, by Jonathan N. Evans and Lewis C. Evans, all of whom now reside and may be found at said Springfield, Ohio; on the farm of William T. Haley, in Springfield township, Clarke county, Ohio, by William T. Haley, who now resides in said Springfield township; by James S. Haley, who now resides and may be found at Greene township, Clarke county, Ohio; by Charles B. Slater, who now resides and may be found in Springfield township, Clarke county, Ohio, and by Austin C. Evans, who now resides and may be found at Springfield, Ohio.

And this defendant prays as it has heretofore prayed.

[Endorsed:] No. 789. U. S. circuit court. Farmers' Friend M'f'g Co. *vs.* Challenge Corn P. Co. Amendments to answer. Filed August 29, '84. Henry M. Hinsdill, clerk, by Chester B. Hinsdill, deputy. Copy.

171 UNITED STATES OF AMERICA, }
Western District of Michigan, Southern Division, } *ss:*

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,

vs.

THE CHALLENGE CORN-PLANTER COMPANY, Defendant.

James A. Marlay, of Dayton, Ohio, being duly sworn, says that he is a member of the board of directors and the president of the complainant corporation, and makes this affidavit in its behalf; that he is familiar with the various corn-planters manufactured and sold in the United States, and knows the planter manufactured by defendant and understands the principles of its construction; that he has read the affidavit of Levi Schofield, filed herein on the 28th day of August, 1884, and knows the contents thereof.

And this deponent says that the corn-planters of said defendant, in a partially manufactured state, referred to in said Schofield affidavit, can be modified at a trifling expense so as not to infringe complainant's letters patent and yet make a corn-planter that will sell readily on the market for nearly as good a price as the planter in its present shape is selling; that this change could be made by removing the hand lever from the machine, which would require nothing but the removal of two bolts, and by connecting the foot treadle and the seat support with a latch, by means of which the runners could be locked out of the ground; that the only new castings which would be required for such a change would be the latch, a bearing for the foot treadle, and a bolt, and that the entire cost
172 of said three castings would not, in the opinion of deponent, exceed fifty cents for each machine, and certainly not seventy-five cents; that in making said change it would not be necessary to change any of the present castings on said planter or to modify in any respect the wood-work thereof, and that defendant would then have a corn-planter which it could sell readily on the market and for nearly as good a price as the present planter of defendant sells for.

Deponent further says that complainant manufactures and sells a corn-planter without a hand lever which sells readily in the market and for a price within two dollars of the price of the planter with a lever manufactured by complainant; that George W. Brown, of Galesburg, Illinois, and the Vandiver Corn-Planter Company of Quincy, Illinois, and James Selby, of Peoria, Illinois, are among the largest corn-planter manufacturers in the United States, and that all of said houses sell readily in the market corn-planters without any hand lever and which are no more salable than the planter of said defendant would be if modified in the manner herein suggested.

Deponent further says that if an order is made herein modifying the injunction herein, as prayed in defendant's petition, whereby defendant will be permitted to go into the market with its machines and solicit orders for the season of 1885, as prayed in said petition, the business of said complainant will be seriously injured, and that such injury will consist not so much in the mere competition in said business which it will offer as in the fact that it will stimulate other manufacturers to make and sell machines in violation of complainant's rights under its patent herein relied on, and thereby produce great loss and expense to complainant, and, in the opinion of deponent, the loss which complainant would thus suffer would
173 thus be far greater than any loss which said defendant would suffer by reason of modifying its said planter and removing therefrom the hand lever, as hereinbefore suggested.

And further says not.

J. A. MARLAY.

Subscribed and sworn to before me this 4th day of September, A. D. 1884.

THADDEUS FOOTE,
Notary Public, Kent Co., Mich., in said District.

173½ [Endorsed:] U. S. circuit court. No. 789. Farmers' Friend M'f'g Co., compl'nt, *vs.* Challenge Corn P. Co., def't. Affidavit of J. A. Marlay in opposition to petition. Filed Sept. 6, 1884. H. M. Hinsdell, clerk. Copy.

174 *Orders.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss*:

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 6 day of September, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and ninth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE FARMERS' FRIEND MAN'F'G COMPANY, Complainant,
vs.
THE CHALLENGE CORN-PLANTER COMPANY, Defendant. } No. 789.

This cause came on to be heard upon petition of defendant to modify the injunction heretofore granted herein, and the court, after hearing the arguments of counsel, and due consideration thereon had—

Ordered, That the prayer of said petition be denied, and that the defendant pay complainant a solicitor's fee of ten dollars.

175 October Term, 1884. In Equity.

THE FARMERS' FRIEND MANUFACTURING COMPANY, Compl't,

vs.

THE CHALLENGE CORN-PLANTER COMPANY, Def't.

DATED OCT. 11, 1884.

And now comes the defendant in the above-entitled cause and moves the court for an order to compel complainant's witness, James W. Atkinson, to answer the cross-interrogatories propounded to him which he declined to answer and all other interrogatories proper on cross-examination relating to the same subject-matter, and for a rule on complainant to produce the said Atkinson at its own cost and expense at the same place where the witness was before examined within ten days, and for such other relief as may seem meet to the court.

STEM & PECK AND
EDWARD TAGGART,
Def't's Sol'rs.

176 *Orders.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } ss:

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids on the 21 day of October, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,
vs.
THE CHALLENGE CORN-PLANTER COMPANY, Defendant. } No. 789.

U. S. Court.

The motion made by the defendant in this cause for an order requiring the complainant to reproduce as a witness James W. Atkinson and to compel said witness to answer certain cross-interrogatories propounded in behalf of said defendant came on to be heard, and said motion having been argued and submitted it is by the court considered and adjudged that the said cross-interrogatories 39, 41, 43, 47, and 48 are not cross-examination and are immaterial.

Interrogatory 48 relates to the course pursued by the Deere and Mansur Company in reference to two suits brought by this complainant against that company and the Wait Manufacturing
177 Company, whether there was an understanding by the Deere and Mansur Company not to take testimony in those suits, a subject not touched by the direct examination; that that decree was by consent appears by the certified copy in evidence.

Cross-interrogatory 51 could properly have been answered by the witness, but it was so far immaterial that it would not be error to rule it out.

It is therefore the judgment of the court that the complainant should not be put to the expense of reproducing the witness to answer the said interrogatories or any of them, and that the witness should not be compelled to make answer thereto, but, inasmuch as the defendant's counsel failed to cross-examine the witness upon the material portion of his direct testimony, opportunity therefor should be afforded.

It is therefore ordered that said complainant, at such convenient time as the defendant shall designate by a written notice of at least ten days, produce said James W. Atkinson as a witness at the city of Dayton, Ohio, and then and there submit to cross-examination and give his testimony herein as to such matters as are proper

178 subjects of cross-examination under the rules of evidence in view of the testimony given by said Atkinson in his direct examination, provided that the costs and expense of procuring the attendance and examination of said witness shall be borne and paid by the defendant herein, and that the complainant be paid the costs of this motion, including a solicitor's fee of ten dollars.

179 U. S. Circuit Court for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.
vs.
THE CHALLENGE CORN-PLANTER CO.

It is hereby agreed that the complainant's time for taking testimony in rebuttal be extended until and including the 18th day of October next, and that any necessary order for this purpose may be made.

Dated at Cincinnati, Sept. 16th, 1884.

STEM & PECK.

[Endorsed:] U. S. circuit court. No. 789. F. F. M'f'g Co. *vs.* The Challenge Corn P. Co. Stipulation. Filed Oct. 22d, 1884. H. M. Hinsdill, clerk. Copy.

180 "COMPLAINANT'S EXHIBIT NELSON ABSTRACT." October 18, 1884. George C. Warrington, Notary Public.

U. S. Circuit Court for the Western District of Michigan.

THE FARMERS' FRIEND M'F'G CO.
vs.
THE CHALLENGE CORN-PLANTER CO.

E. M. Campbell. F. M. Trissal.

Springfield Abstract Co., investment and collecting agents, notaries public; deeds and mortgages made on short notice; lands in Clarke Co. for sale; Western lands for sale or rent; titles corrected, mortgages released, taxes paid, and all business relating to real estate promptly attended to.

SPRINGFIELD, OHIO.

Abstract of title, prepared for James Nelson, by order of attorney, to the following p't: N. W. sec. 4, T. 4, R. 9, M. R. S.

Begin on the S. side of Main St. where the E. line of Jackson St. intersects the S. line of s'd Main St., thence with said E. line of Jackson St. S. 150 ft. to the N. line of the lands of the Dayton R. R.; thence E. with said N. line 35 ft., m. or l., to the S. W. of Stroeke and Keiser's lands, formerly Evans & Foos M'f'g Co.; thence with their W. line N. 200 ft., m. or l., to the S. line of Main St.; thence W. with said line 28⅔ ft. to the beginning.

By SPRINGFIELD ABSTRACT CO.,
Springfield Ohio.

James Madison, President of U. S., to Francis Best. Patent. Issued 10, 1, '11. Filed 12, 19, '35; vol. D, p. 406.

Description.—N. E. ¼ sec. 4, T. 4, R. 9, M. R. S.

Will of Francis Best, deceased.

"Thirdly. I will and bequeath to my three younger sons, David, Thomas, and Joseph, the quarter section upon which I
181 now reside, with all its appurtenances."

(This is the N. E. ¼ of sec. 4, T. 4, R. 9, M. R. S.)

"Lastly, I appoint John Perrin and John Best ex'rs to this my last will and testament. In witness," &c.

Probated Nov. term, 1820. John Best appointed executor. Will Record 1, p. —.

Thomas Best, Jane Best (wife?), Joseph Best to John Gates. O. C. $400.00. Made 2, 3, '27. Filed 10, 2, '27, vol. D, 355.

N. E. ¼ sec. 4, T. 4, R. 9, M. R. S.

Grant & *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment regular, joint.

John Gates; Mary, wf.; David Best to Sarah W. Halsey, James S. Halsey. Warranty. $1,725.00. Made 2, 11, '31. Filed 3, 8, '31, vol. "G," 457.

N. E. ¼ sec. 4, T. 4, R. 9, M. R. S.

John Gates and wf. convey ⅔ of said tract; David Best conveys ⅓, subject to dower of Rosannah Best, widow of Francis Best, dec'd.

Grant and *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment joint and several. Wife separate examination. Dower released.

Rosannah Best to James S. Halsey, Sarah W. Halsey. O. C. Made 3, 22, '31. Filed 3, 22, '31, vol. "G," 451.

That part of N. E. ¼ sec. 4, T. 4, R. 9, M. R. S., which was set off to said Rosannah Best as her dower in the estate of Francis Best, dec'd.

Grant and *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment regular.

182 Sarah W. Halsey to James S. Halsey. O. C. $800.00. Made 2, 25, '33. Filed 3, 6, '33, vol. "K," 285.

Description.—Begin at N. W. cor. N. E. qr., 4, 4, 9; run S. 159 poles, E. $100\frac{73}{100}$ poles, N. $159\frac{43}{100}$ poles, W. $100\frac{73}{100}$ poles, to beginning.

Grant & *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment regular.

Elizabeth Bryce (*nee* Best), Zebulon Lewis, Jane, wf., William Best, Mary, wf., children of Francis Best, dec'd., to John Gates, David Best. O. C. $100.00. Made 3, 9, '35 Filed 3, 9, '35, vol. "N," 203.

All grantors' interest in said E. quarter sec. 4, T. 4, R. 9, M. R. S. Grant & *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment joint and several. Wives examined separate and apart. Dower released.

John Best to John Gates, David Best. O. C. $400.00. Made 3, 19, '35. Filed 4, 13, '35, vol. "N," 309.

N. E. ¼ sec. 4, T. 4, R. 9, M. R. S. No wife named. Grant and *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment regular.

Francis Best to John Gates, David Best. O. C. $100.00 Made 5, 25, '35. Filed ——, vol. "N," 488.

All grantor's interest in Francis Best's estate. (No wife named.) Grant and *habendum*. Fee simple.

James S. Halsey, Catherine T., wf., to Joshua Boucher. Warranty. $4,500.00. Made 11, 8, '44. Filed 11, 11, '44, vol. "V," 252.

Description includes caption. Grant and *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment joint and several. Wife separate examination. Dower released.

183 Joshua Boucher; Lucinda, wf., to Seymour A. Winslow. Warranty. $2,900.00. Made 3, 27, '47. Filed 4, 2, '47, vol. "X," 13.

One undivided half of the tract. Including caption. Grant and *habendum*. Fee simple. Two witnesses. Dower released. S. S. proper. Acknowledgment joint and several. Wife separate examination.

Joshua Boucher; Lucinda, wf.; Seymour A. Winslow; Sylvia C., wf., to Henry Ruhl. Warranty. $6,500.00. Made 6, 6, '49. Filed 7, 28, '49, vol. "Z," 271.

Description includes caption. Grant & *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment joint and several. Wives separate examination. Dower released.

Henry Ruhl; Mary, wf., to Levi Ruhl. Warranty. No consideration. Made 2, 27, '51. Filed 11, 16, '51, vol. "27," 614.

Description includes caption. Grant and *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment joint and several. Wife separate examination. Dower released.

Levi Ruhl; Mary, wf., to George Dibert. Warranty. $600.00. Made 9, 31, '45. Filed 11, 26, '45, vol. "32," 510.

Description includes caption. Grant and *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment joint and several. Wife separate examination. Dower released. Reservation of a certain four-pole street, not designated by name nor located by boundaries.

George Dibert; Elizabeth, wf., to Washington George. Warranty. $500.00. Made 11, 22, '77. Filed 11, 23, '77, vol. 67, 633.

Description (faulty): "Being part of section No. 4, T. 4 (?), R. 9, M. R. S., begin. on the S. side of Main St. where the same is intersected by the E. line of Jackson St. extended, thence with the E. line of Jackson St. S. 150 ft., m. or l., to Dayton R. R.; thence E. 35 ft., m. or l., to S. W. cor. of the lands of Evans & Foos M'f'g Co.; thence N. 200 ft., m. or l., to S. line of Main St.; thence W. $28\frac{4}{10}$ ft., m. or l., to the beginning. (Jackson St. is supposed to be the four-pole street reserved by Levi Ruhl in the last conveyance.) Grant and *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment joint and several. Wife separate examination. Dower released.

184 Washington George; Anna, wf., to Mary O. Nelson. Warranty. $800.00. Made 2, 25, '80. Filed 3, 1, '80, vol. 72, 452.

Description same as last entry. Grant and *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment joint and several. Wife separate examination. Dower released.

James Nelson, Mary O. Nelson to Chase Stewart. Warranty. $1 and trust. Made 9, 7, '82. Filed 9, 9, '82, vol. 81, 66.

Description same as last entry. Trust to convey the same to James Nelson in fee simple by duly executed deed, said conveyance to constitute a fulfillment of said trust. Grant and *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment joint and several. Wife separate examination. Dower released.

Chase Stewart (unm.) to James Nelson, of last entry. $1.00 and trust executed to fulfill conditions. Made 9, 7, '82. Filed 9, 9, '82, vol. 80, 309.

Description same as last entry. Grant and *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment regular.

James Nelson; Mary O., wf., to William Reece. Warranty. $2,000.00. Made 8, 6, '83. Filed 8, 8, '83, vol. 83, 245.

Description: P't sec. 4, T. 4, R. 9, M. R. S., begin. on the S. side of Main St. where the E. line of Jackson St. intersects the same, thence with said E. line of Jackson St. S. 150 ft. to the N. line of

the lands of the Dayton R. R.; thence E. with said N. line 35 ft., m. or l., to the S. W. cor. of Strock and Keiser's lands, formerly the Evans & Foos M'f'g Co.; thence with their W. line N. 200 ft., m. or l., to S. line of Main St.; thence W. with said line 28⅔ ft. to beginning. Grant and *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment joint and several. Wife separate examination. Dower released.

Wm. Reece; Nannie, wf., to James Nelson. Warranty. $2,400.00. Signed 1, 22, '83. Ack. 1, 22, '84. Filed 1, 30, '84, vol. 84, 117.

185 Description same as last entry. Grant and *habendum*. Fee simple. Two witnesses. S. S. proper. Acknowledgment joint and several. Wife separate examination. Dower released.

Mortgages Uncancelled.

James Nelson; Mary O., wf., to Wm. Reece. Mortgage. Made 1, 22, '84. Filed 1, 23, '84, vol. 46, 261.

Description same as caption.
$350, due in 1 yr. }
$350, " " 2 " } 8%, even date.
$425, " " 3 " }

James Nelson; Mary O., wf., to Lamar Foos. Mtge. Made 4, 24, '83. Filed 4, 26, '83, vol. 44, 305.

Description same as caption.
$350, due 2, 27, '85, at 8%.

Wm. Reece; Nannie A., wf., to James Nelson. Mtge. Made 7, 28, '83. Filed 8, 4, '83, vol. 45, 197.

$600, dated 7, 30, '83, due at 6 mos., at 8%.
Description same as caption.
Delinquent taxes, none.
Due, taxes for 1884.
Judgments, none.
Other liens, none.

186 STATE OF OHIO, } ss:
Clarke County, }

We, the undersigned, abstractors of real estate for Clarke county, Ohio, do hereby certify that the *following* abstract is correct, showing the title to and incumbrances upon the real estate of James Nelson, as appears from the records in the recorder's office, the general judgment docket in the clerk's office, the tax duplicate, and the register of tax sales for Clarke county, Ohio.

Witness our hands and seals this the sixth day of October, 1884.

SPRINGFIELD ABSTRACT CO.,
Abstractors.

I, S. A. Todd, recorder of Clarke county, Ohio, do hereby certify that the foregoing abstract is a true showing of the title as therein set forth as the same is shown upon the records of deeds and mortgages in and for Clarke county, State of Ohio.

Witness my hand and official seal this sixth day of October, eighteen hundred and 84.

[SEAL.]

S. A. TODD,
Recorder Clarke County, Ohio.

186½ [Endorsed:] U. S. circuit court. No. 789. The Farmers' F. M'f'g Co. *vs.* The Challenge C. P. Co. Complainant's Exhibit Nelson Abstract. Copy. Filed Oct. 22, 1884. H. M. Hinsdill, clerk.

187 October Term, 1884. In Equity.

FARMERS' FRIEND MANUFACTURING CO.

vs.

CHALLENGE CORN-PLANTER CO.

DATED OCTOBER 24, 1884.

And now comes the said defendant, by Stem & Peck and Edward Taggart, its solicitors, and moves the court for an order granting the said defendant ten days' time in which to take surrebuttal testimony.

This motion is based on the affidavit of Edward Taggart this day filed herein, on the testimony taken on the part of the complainant in rebuttal and since the closing of defendants' proofs, and duly returned and filed herein and on the records and files in this cause.

STEM & PECK AND
EDWARD TAGGART,
Solicitors for Defendant.

188 STATE OF MICHIGAN, } *ss:*
County of Kent, }

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

FARMERS' FRIEND MANUFACTURING COMPANY

vs.

CHALLENGE CORN-PLANTER CO.

Edward Taggart, of Grand Rapids, Michigan, being duly sworn, deposes and says that he is one of the solicitors for the complainant in said cause; that, by an order dated the 14th day of July, 1884, the time for taking testimony in said cause was fixed as follows:

The complainant was given ten days from the date of said order in which to take its testimony in support of the bill herein; the defendant forty days after the expiration of complainant's time, as above limited, in which to take its testimony in defense, and the complainant forty days after the close of defendant's proofs in which

to take its testimony in reply; that the defendant's proofs closed on the 27th day of August, 1884, and under said order the complainant's time for — testimony in reply expired on the 6th day of October, 1884, but that, by an arrangement between Mess. Stem & Peck and Wood & Boyd, the complainant's time for rebuttal was extended and their rebuttal testimony did not close until the 20th day of October, 1884.

Further, that deponent believes it is necessary that certain of the testimony on the part of the complainant taken since defendant's proofs were closed be rebutted.

EDWARD TAGGART.

Subscribed and sworn to before me this 24th day of October, 1884.

FRED. W. STEVENS,
Notary Public, Kent Co., Mich.

[Endorsed:] No. 789. U. S. circuit court. Farmers' Friend M'f'g Co. *vs.* Challenge C. P. Co. Aff't of Edward Taggart on motion for time for surrebuttal. Filed Oct. 29, 1884. H. M. Hinsdill, clerk. Copy.

189 *Orders.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss:*

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 29 day of October, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,
vs.
THE CHALLENGE CORN-PLANTER CO., Defendant. } No. 789.

In this cause, on reading and filing the affidavit of Edward Taggart, one of defendant's solicitors, and, on his motion, after hearing E. W. Withey, Esq., one of complainant's solicitors, in opposition thereto—

It is ordered that said defendant have ten days from the date of this order to produce witnesses and take surrebuttal proofs on the following points:

1. As to the testimony of the witness Fogle regarding the accounts of the Evans M'f'g Co. and to books; and,

2. As to the abstract offered in evidence showing a deed to the witness Nelson, and as to the real date of the purchase by said witness of the property described in such deed, and that five days' notice be given to complainant's solicitors of the examination of wit-

nesses under this order, such notice to state the time and place of such examination.

190 Circuit Court of the United States, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING CO.
vs.
THE CHALLENGE CORN-PLANTER CO.

It is hereby stipulated and agreed by and between the counsel for the respective parties in the above-entitled cause that if A. C. Evans and William Foos were put on the stand they would testify that the Evans Manufacturing Company was dissolved in August, 1880, and the Evans & Foos Manufacturing Company organized in place of it; that the books of the Evans & Foos Manufacturing Company were kept in the safe of the company, while the old books of the Evans Manufacturing Company, which contained a record of their business up to their dissolution, in August, 1880, were destroyed in the fire which burned the shops of the Evans & Foos Manufacturing Company, in May, 1882, while the books the Evans & Foos Manufacturing Company in the safe were preserved. It is further agreed that if James Nelson were put on the stand he would testify that the ground upon which his shop is built was purchased for the purpose of the erection of said shop in 1877; that the deed was made to Washington George, a partner of said Nelson, said property being finally deeded to said Nelson or to his wife, Mary Nelson, in 1880, when the said James Nelson bought out his partner, Washington George. It is further agreed that this stipulation may be used in evidence in this cause as proof the same as if said witnesses had been produced and had testified as above.

Cincinnati, November 3rd, 1884.

WOOD & BOYD,
Solicitors for Complainant.
STEM & PECK,
Solicitors for Defendant.

[Endorsed:] U. S. circuit court, west. dist. Mich., S. D. In equity. No. 789. Farmers' Friend M'f'g Co. *vs.* Challenge C. P. Co. Stipulation as to testimony of A. C. Evans, Wm. Foos, & James Nelson. Filed Nov. 7, 1884. H. M. Hinsdill, clerk. Stem & Peck & Edward Taggart, def't's sol'rs.

191 United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFACTURING CO.
vs.
THE CHALLENGE CORN-PLANTER CO.

Messrs. Wood & Boyd, attorneys for complainant.

GENTLEMEN: We hereby give notice that we desire James W. Atkinson, a witness heretofore produced on behalf of complainant in

this cause at Dayton, Ohio, to be produced at the said city of Dayton and an opportunity afforded defendant to cross-examine him in accordance with the order of court made in this cause on the 21st day of October, 1884, on Monday, November 3rd, 1884, or at any earlier date if you find it more convenient. Please inform us should you prefer an earlier day. We are ready to pay the cost, as directed by the court.

Yours very truly,

STEM & PECK,
Att'ys for Defendant.

Received copy this 23rd day of October, 1884.

WOOD & BOYD,
Att'ys for Complainant.

192 United States Circuit Court for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.
vs.
THE CHALLENGE CORN-PLANTER CO. } 789.

To Messrs. Stem & Peck, solicitors for def't.

GENTLEMEN: Since the receipt of your notice of the 23rd inst. we have received a certified copy of the order made herein on the 21st, and, as we understand it, the court substantially overruled your motion and denies your right to have any of the questions answered which the witness declined to answer; but, inasmuch as you failed to cross-examine upon material portions of the witness' direct testimony; you are allowed an opportunity to do so without expense to the complainant and upon payment of the costs of your motion, including a solicitor's fee of $10.00. The witness certainly cannot be expected to advance the necessary expenses of a trip from Moline, Ill., to Dayton and return, and as the order was made for the purpose of allowing you to perform a neglected duty we do not think our client should be asked to advance these expenses.

Therefore, before taking any steps to secure the attendance of the witness, we will require you to deposit in the court or advance to us the necessary costs and expenses, which we estimate as follows:

Solicitor's fee on order	$10
P'd clerk for copy do.	1 25
R. R. fare from Moline to Dayton and return	24 20
Sleeper both ways	6
Meals on the way	4 50
Witness' fees while travelling four days	6
	$51 95

The above does not include court costs or the witness' fees while on the stand nor of the officer who may take the testimony.

Yours truly,

WOOD & BOYD,
Sol'rs for Complainant.

Cin'ti, Oct. 27, 1884.
14—359

193 United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUFATURING CO.
vs.
THE CHALLENGE CORN-PLANTER CO.

Messrs. Wood & Boyd, attorneys for complainant.

GENTLEMEN: In reply to your demand for the payment to you or into court of the sum of $51.95 in anticipation of the expenses of producing Mr. Atkinson under the order of the court for cross-examination, we learn from our associate counsel that the docket fee has already been paid into court.

With regard to the remainder we must decline to advance this money, as we do not understand from the order of court that we are required to advance any such sum, but are ready to pay whatever cost may be made and awarded by court, and reiterate our demand for the production of Mr. Atkinson for cross-examination as set forth in the notice heretofore sent you.

Yours very truly,

STEM & PECK,
Attorneys for Defendant.

Received copy this 30th day of October, 1884.

WOOD & BOYD,
Attorneys for Complainant.

194 United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.
vs.
THE CHALLENGE CORN-PLANTER CO.

CIN'TI, *Oct.* 30, 1884.

Messrs. Stem & Peck, solicitors for def't.

GENTLEMEN: Referring to yours of to-day we would say that Mr. Atkinson is in no way to blame for your neglect to properly cross-examine him, and this we understand to be the court's reason for making the order for his reproduction, subject to the provision "that the costs and expenses of procuring the attendance and examination of said witness shall be borne and paid by the defendant." The solicitor's fee of $10.00 having been paid, the balance, according to our estimate of the 27th, is $41.95, and we will be glad to have you point out any error in the estimate, or if you prefer you can advance or deposit any amount you think sufficient to cover the costs and expenses, and if not satisfactory to us we will pray instructions from the court

We cannot, however, make any move towards producing the witness until these costs and expenses are secured.

Yours truly,

WOOD & BOYD,
Sol'rs for Complainant.

195 United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

FARMERS' FRIEND M'F'G CO.

vs.

CHALLENGE CORN-PLANTER CO.

Messrs. Wood & Boyd, att'ys for complainant.

GENTLEMEN: The cause of our failure to cross-examine Mr. Atkinson was simply and solely his refusal to answer questions. We repeat our desire that he be reproduced for cross-examination, and we stand ready to pay any costs the court may assess against us, but we decline to pay them before they are made.

STEM & PECK,
Att'ys for Def't.

Received copy this 30th day of Oct., 1884.

WOOD & BOYD,
Sol'rs for Com.

[Endorsed:] U. S. circuit court, west. dist. Mich., S. D. In equity. No. 789. Farmers' Friend M'f'g Co. *vs.* Challenge Corn-Planter Co. Notice relating to reproduction of Atkinson. Filed Nov. 7, 1884. H. M. Hinsdill, clerk. Copy. Stem & Peck & Edward Taggart, def't's sol'rs.

196 *Orders.*

THE UNITED STATES OF AMERICA, }
Western District of Michigan, Southern Division, } *ss:*

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 18 day of November, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth—present, the Honorables John Baxter, circuit judge, and Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,
vs.
THE CHALLENGE CORN-PLANTER COMPANY, Defendant. } No. 789.

This cause came on to be heard upon pleadings and proofs and was argued in part by counsel for the respective parties.

197 *Orders.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss:*

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 19 day of November, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth—present, the Honorables John Baxter, circuit judge, and Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,
vs.
THE CHALLENGE CORN-PLANTER COMPANY, Defendant. } No. 789.

This cause coming on for further hearing, the court, after listening to the concluding arguments of counsel, took the same under advisement.

198 *Judge Baxter's Opinion.*

In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUF'G CO., Complainant,
vs.
THE CHALLENGE CORN-PLANTER CO., Defendant.

This is a bill to enjoin an alleged infringement of reissued letters patent No. 10155, issued to the complainant, as assignee of Michael Runstetler, on July 11th, 1882.

We have not the time to enter upon a full discussion of the facts in the case, and hence will content ourselves with a simple announcement of the conclusion to which we have arrived on the question made and relied on by the defendant.

In a former suit prosecuted by the complainant in this court against the Waite Manufacturing Company for an alleged infringement of the same reissued letters we rendered a decree in complainant's favor, affirming their validity, and ordered an account of the damages. This, of course, would be conclusive of this case on that point, if the facts of the two cases were the same, but the defendant did not introduce in the former case any testimony in support of its defense. The decree made therein was predicated upon the *prima facie* case made by the production of complainant's said reissued letters and proof of the alleged infringement, but here the defendant

comes with full proof. Among other testimony it has put in
199 evidence a copy of the original letters patent, and insists that upon a comparison thereof with the reissued letters it will appear that the latter is not for the same invention covered by the former.

The first claim of the original patent is in these words: "In a corn-planter having the rear main frame mounted on supporting wheels, the front runner frame hinged or pivoted to the main frame and operated by an elevating and depressing lever pivoted to the main frame, having its front end slotted and connected to the runner frame by a bolt passing through said slot, in combination with the shaft A and lifting hand lever D, rigidly attached to said shaft for elevating, depressing, and controlling the runner frame, substantially as herein set forth."

A reissue was applied for and obtained, in which the foregoing claim was expanded into the four following claims:

"1. In a corn-planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, the combination of a foot treadle and a hand lever adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners, substantially as herein set forth.

"2. In a corn-planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame a foot treadle for elevating or depressing the runner frame, in combination with a hand lock lever, the foot treadle and hand lever adapted to be used in conjunction for forcing and locking the runners into the ground or lifting and locking them out of the ground, substantially as herein set forth.

"3. In a corn-planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, a foot treadle for elevating or depressing the runner frame, in combination with a hand lever rigidly connected therewith, that either hand lever or treadle may be used for forcing the runners into the ground or lifting them out of the ground, substantially as herein set forth.

200 "4. The combination, in a corn-planter having the rear main frame mounted on supporting wheels and a front runner frame hinged or pivoted to the main frame, of a foot-treadle for elevating the runner frame and a hand lever for elevating or depressing the same, both arranged to move simultaneously when either is acted upon by an operator."

The foregoing first claim of the original patent ought, in view as well of its own terms as of the correspondence relating thereto, which passed between the office and the inventor's solicitors, shown by the file wrapper, to be restricted to the specific combination therein described. This was all to which the inventor was entitled, everything else having been anticipated by others. Thus construed, the defendant's planter is not an infringement of the original patent. This was conceded by the complainant's expert in his testimony, and by counsel in the argument of the cause; but defendant's

planter is, as they contend and as the court concedes, an infringement of the reissued patent. The reissue is not, as we think, for the same invention covered by the original letters and *are* invalid.

Complainant's bill will be dismissed with costs.

BAXTER, *Judge, etc.*

Filed Jan'y 12, 1885.

H. M. HINSDILL, *Clerk.*

201 *Judge Withey's Dissenting Opinion.*

In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUF'G CO., Complainant,

vs.

THE CHALLENGE CORN-PLANTER CO., Defendant.

I am not able to concur in the opinion of the circuit judge filed in this case, and briefly state my reasons:

The suit is for the infringement of certain claims of reissued letters patent 10155, granted to complainant as assignee of Michael Runstetler, the inventor. The invention, as stated in complainant's brief, consists of a combination of hand and foot levers, arranged in connection with the frames of a corn-planter for regulating and controlling the operations of the machine. While hand and foot levers are old and have long been used on many kinds of machines separately and combined, and are shown in many patents of earlier date than complainant's, it is believed the patented improvement in corn-planters of the specific combination and devices shown and described in the original patent, 231,104, as a means for controlling the machine were, at the time Runstetler invented said improvements, new and useful, not known or used by others, and that in the reissued letters there is no broadening of the invention, but a warrantable enlargement of the claim made in the original patent.

202 Inasmuch as the opinion of the circuit judge is that the defendant's planter would infringe the reissued letters, if the reissue was valid, I shall, as I concur in that view, attempt to show that the reissue patent is valid.

After stating that the decision rests upon one question made and relied on by the defendant, viz., that upon comparison of the original patent with the reissued letters it will appear that the latter are not for the same invention covered by the former, the opinion states the claim in question in the original patent and the four claims of the reissued letters which the bill alleges the defendant has infringed, and then concisely gives the grounds of the decision as follows:

"The foregoing first claim of the original patent ought, in view as well of its own terms as of the correspondence relating thereto, which passed between the office and the inventor's solicitors, shown

by the file wrapper to be restricted to the specific combination therein described. This was all to which the inventor was entitled, everything else having been anticipated by others. Thus construed, the defendant's planter is not an infringement of the original patent. This was conceded by complainant's expert in his testimony and by counsel in the argument of the cause. But defendant's planter is, as they contend and as the court concedes, an infringement of the reissued patent. The reissue is not, as we think, for the same invention covered by the original letters and *are* invalid."

It may be said at the outset that the case does not seem to involve consideration of whether the defendant's machine is an infringement of the original patent. The reissued letters were granted and the original patent surrendered for the reason *prima facie* that by inadvertence or mistake the inventor had omitted to claim some material element of the improvement shown in the original patent which he might have claimed. Hence, if the defendant's planter would not be an infringement of the original patent it does not follow that such machine does not infringe the reissued letters. Again, I did not understand it to have been admitted by complainant's counsel that the defendant's planter would not
203 be an infringement of the original patent, and complainant's expert in his testimony on his cross-examination, in answer to question 64, page 13, complainant's record, does not, as I understand it, concede it. He is shown the original of the reissued letters and asked "whether you find any claim in said original which would be infringed by Exhibit Challenge Rotary Drop," which is the defendant's planter. He answered this "would depend upon the construction which a court might give to the words in that claim, as follows: 'Having its front end slotted and connected to the runner frame by a bolt passing through said slot.' My own construction of it would be such that I would consider it an infringement."

The complainant examined but the one expert, and it would therefore appear to be a mistake to say that complainant's expert in his testimony conceded that the defendant's planter does not infringe the original patent.

I call attention to the invention shown and described in the original patent, and to the claim therein bearing upon the reissue, with a view to showing that the improvement was not restricted to the specific combination of said first claim of the original patent, and that such combination therein claimed was not all that the inventor was entitled to claim. I shall further on call attention to some considerations why everything else had not been anticipated by others and why the reissue is not invalid.

The original patent describes the invention as follows:

"My invention relates to an improvement in corn-planters of the class employing a main frame mounted on wheels, which main frame is combined with a runner frame in front and so attached to the main frame that it may be either a rigid or a yielding planter," etc.

"My improvement consists, first, in the arrangement of a lifting hand lever mounted upon a shaft and connected to a foot lever cen-

trally pivoted to the main frame, the forward end of which lever is hinged to the runner frame, and the several parts being so arranged that the runner frame may be controlled by either the hand
204 lever or foot lever, or both, at the will of the operator, the hand lever being combined with detachable fastening devices so as to be set in proper position to form a rigid planter, and so that the fastening devices can be dispensed with and the hand and foot levers used to control the operation of the machine when used as a yielding planter.

"In the accompanying drawings Fig. 3 is a broken plan view, partly in section, showing the connection between the hand and foot levers," etc.

"When the locking devices of the lifting lever D are brought into operation the operator sets the runner frame in any given position by means of the lever D, the lock lever holding it rigid, but under easy control of the hand, or the foot lever may be used to assist in raising or lowering the frame, and the weight of the driver be thrown upon the foot lever to force the runner into the ground if necessary."

In view of the invention as thus described and shown by the specifications and illustrated by the drawings are the claims in the reissued letters extended beyond the limits of the invention?

In the original patent the claim is as follows: "I claim—1. *In a corn planter having the rear main frame mounted on supporting wheels, the front runner frame hinged or pivoted to the main frame* and operated by an elevating and depressing lever pivoted to the main frame, having its front end slotted and connected to the runner frame by a bolt passing through said slot, in combination with the shaft *d* and the lifting hand lever D, rigidly attached to said shaft for elevating, depressing, and controlling the runner frame, substantially as herein set forth."

It will be noticed that this claim omits the combination of a foot treadle and a hand lever "so arranged that the runner frame may be controlled by either or both at the will of the operator," and the lock lever arrangement by which the front and rear frames of the planter are locked together in such a way as to hold the runners firmly in or out of the ground when desired or required to form a rigid planter.

205 The combinations which are claimed as new and useful in the reissued letters and described and shown in the original patent consist, among other things, of facilities for operating a corn-planter in the manner described readily and without delay and so that the whole weight of the driver can be instantly thrown onto the runners to depress them into the ground by the use of the hands and feet and locking them there. Of course, hand levers and foot levers are not new, and they have been employed in machinery to be operated separately and combined, but the changes made by Runstetler give those practical results which enable a corn-planter to be operated in a practical way never before attained, and therefore in a new and useful manner. The reissued letters enlarge the claim to embrace such new and useful results—nothing more than the patentee was entitled to claim in the original letters. The third claim

in the reissued letters, of a rigid connection of hand and foot levers, has novelty only as adding an additional feature to the combination specified in the first claim.

The three claims in question in the reissue are as follows. I omit the words in the original claim that are in italic, but which are contained at the beginning of each of the following:

"I claim—

"1. * * * The combination of a foot treadle and a hand lever, adapted to be used in conjunction or independently, for the purpose of elevating or depressing the runners, substantially as herein set forth.

"2. * * * A foot treadle for elevating or depressing the runner frame in combination with a hand lock lever, the foot treadle and hand lever adapted to be used in conjunction for forcing and locking the runners into the ground or lifting and locking them out of the ground, substantially as herein set forth.

"3. * * * A foot treadle for elevating or depressing the runner frame, in combination with a hand lever rigidly connected therewith, that either hand lever or treadle may be used for forcing the runners into the ground or lifting them out of the ground, substantially as herein set forth."

206 It will be remembered that it is held by the circuit judge that the defendant's planter infringes the complainant's reissued letters, and there can be no doubt of this if the reissue is valid.

Comparison between the original and reissued patents, the description, specifications, and drawings in both being the same, makes it apparent, in my judgment, that there has been no broadening of the claim in the latter beyond the invention.

If the devices sought to be covered by a reissue are in fact new and useful, and if they are shown in the original specifications and drawings or model, then the patentee is entitled to secure their exclusive use by a reissue. Wheeler *vs.* Reaper Co., 10 Blatchf., 181. This rule is recognized by Justice Matthews and Judge Sage in Odell *vs.* Stout, 22 Fed. Rep., 161.

The inventor is required by the statute to particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery, but the statute also provides that whenever a patent is inoperative or invalid by reason of a defective or insufficient specification, and the error arises by inadvertence, accident, or mistake, "a new patent for the same invention" may be issued on surrender of the original letters patent. The "specifications" include the statements, descriptions, drawings, and models, and claim in the original patent, hence the courts hold that the inventor is entitled in his reissued letters to so "enlarge his claim as to make it extend to the limits of his invention," as shown and described in the original patent, and that "enlarging the claim may be an entirely different thing from broadening the invention." Odell *vs.* Stout, *supra*.

There was no showing in this case as to what proof was before the Patent Office on the application for reissued letters except a certified copy of the file wrapper. Whether evidence was presented beyond

what is therein shown does not appear. *Prima facie* the reissue was granted upon adequate showing of inadvertence or mistake
207 in omitting to claim the full invention described and shown in the original patent. In my opinion it appears from what I have presented of the two patents that the invention is not broadened in the reissue, but it is simply an enlargement in the first three claims to cover his improvements.

The opinion of the circuit judge, as before stated, is that the claim in the original patent ought to be restricted to the specific combination therein described, everything else having been anticipated. I have attempted to show that upon the face of the patent the claim ought not to be thus restricted, and now I will briefly consider whether the invention was anticipated by others. *Prima facie* no part of the invention shown and described in the original patent was anticipated or the reissued letters would not have been granted with its broadened or enlarged claim.

A large number of corn-planters and machines were put in evidence and exhibited at the hearing to show the improvements in corn-planters and the devices employed for operating them more successfully by means of combined hand levers and foot treadles and so as to give the best practical results to the farmer. The "Evans corn drill and planter" was the only one that even tended to show that the invention of Runstetler had been anticipated by any person; therefore I confine myself to the evidence touching that planter.

Runstetler's invention was in November, 1879. Austin C. Evans testified, in substance, that in the spring of 1878, at Springfield, O., he made, with the assistance of others, in the shop of the Evans Manufacturing Co., a corn-planter provided with hand and foot levers. He was unable to produce the machine, but says, "I can produce one similarly constructed," which is the exhibit—Evans corn drill and planter—before referred to. Asked how he was able to fix the date of making the corn-planter similar to exhibit, his reply is, "My memory and dates that I have." But no memorandum or other evidence of the date than memory is shown to exist to which the witness has had access. His testimony further is that the machine he made was never patented and no patent applied for.
208 It was a single machine, without a duplicate, never used but once, when a farmer borrowed it to plant corn. When it was returned to the shop the machine was laid aside, where it remained unnoticed until the spring of 1882 and then burned with the shop in which it was.

Evans was engaged with his firm in building corn-planters in 1878 and the following years up to 1883, but a different planter was adopted and manufactured. Evans went into the field where the particular machine was being operated by the farmer, Haley, who borrowed it, and there observed how it performed, and may be supposed to have become satisfied whether it was a practical, useful machine. The conclusion he arrived at is sufficiently evidenced by the fact that it was put aside and abandoned—entirely discarded.

Perhaps the preponderance of evidence is that the machine was manufactured in the spring of 1878 and used by the farmer that season to plant two fields of corn; but it is, nevertheless, true that there is no evidence of the date other than the uncertain and treacherous recollection of witnesses, and there is some evidence tending to show a later date; but if it is conceded to have been manufactured in 1878 did it embrace such devices and combinations of hand lever and foot treadle as to anticipate the complainant's invention? I have said the machine was burned; it could not be produced in evidence; but one piece of wrought iron, called a latch, was rescued from a pile of scraps, and this latch was slightly changed and fitted to another machine made by the Evans Manufacturing Co., which machine thus manipulated is the "Evans corn drill and planter" exhibited to represent the burned machine. Witnesses testify that this exhibit is constructed similarly to the original planter burned in 1882. Evans says his firm manufactured 25 machines for use in 1878 similar to the corn-planter that was burned. He says "there was no difference" between them and his first machine, made in the spring of 1878, "except that the others did not have a hand lever."

The evidence amounts to this: The Evans Manufacturing Co. made 25 corn-planters in 1878, one of which was fitted
209 with hand and foot levers. The one having such attachments was loaned to a farmer to plant two fields of corn, Evans going to see its practical working in the field. It was returned to the shop and put away, where it remained for years, the company going on with the manufacture of corn-planters like Exhibit "Evans Planter," without the combined hand and foot levers. Now, it is manifest that the alleged anticipating corn-planter was without practical value, as shown by the defendant's witnesses. If Evans' testimony does not suffice to make out the defense there is none in the case. The truth is the combination in the "Evans corn drill and planter," as fixed up to represent the anticipating machine, like the anticipating machine itself, required so much skill to operate the system of levers as to be practically worthless, and ought not to be allowed to destroy the claim of a *bona fide* inventor. There may be and are points of analogy, probably, but the difference between the Evans corn drill and planter, made in the spring of 1878, as he claims, and the Runstetler invention, owned by complainant, is the difference between failure and success. This is shown by the fact that complainant's invention has been adopted by many other manufacturers and has superseded in the market the older forms of corn-planters. The defendant has adopted the invention in its infringing machines simply because complainant's invention is practical and useful. The utility of complainant's invention is shown by its results, if there was otherwise doubt from the evidence, yet when utility is shown to exist in any degree courts presume the invention sufficient to support the patent. Smith *vs.* Goodyear Dental Co., 93 U. S., 495.

Judge Blodgett, in Brown Manufacturing Co. *vs.* Deere, 21 Fed. Rep., 712, says: "The fact that not only the defendant in this case, but other large manufacturers of cultivators, have at once adopted

substantially the same auxiliary lifting devices shown in the complainant's patent is evidence of the absolute acceptance of this as a practical solution of many of the difficulties which had been encountered in the attempt to use the older device, and is such
210 a change and improvement as required more than mechanical skill, and brings this device fairly within the domain of the patent law."

Here, in the case at bar, is an old piece of wrought iron fitted to an old corn-planter, and the testimony of witnesses from memory, going back six years, as to the identity of such corn-planter, in its system and combination of levers and their mode of operation, offered to defeat a practical invention. A reliable and valuable device should not be lost to its owner in that way. The defendant's evidence lies too much in the "hazy and treacherous memory of those who long ago saw a machine, and now, looking upon one to represent that, when asked if the one is substantially the other, answer "yes."

Believing, for the reasons stated, that the Evans machine did not anticipate the complainant's invention, and that the latter is both new and useful and is invention, and that the reissue claims no more than the invention shown and described in the original patent, the complainant is, in my opinion, entitled to a decree perpetually enjoining the defendant from manufacturing the infringing machine and for an accounting.

S. L. WITHEY,
District Judge.

Filed Feb'y 7, 1885.

H. M. HINSDILL, *Clerk.*

211 *Orders.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss:*

U. S. Court.

At a session of a circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids on the 19 day of February, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and ninth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE FARMERS' FRIEND MANUFACTURING COMPANY
vs.
THE CHALLENGE CORN-PLANTER CO. } In Equity. No. 789.

This cause coming on to be heard upon the pleadings and proofs and arguments of counsel, and the court, being fully advised, doth find that the equities are with the defendants, and it is ordered, ad-

judged, and decreed that the temporary injunction heretofore granted in this cause be, and the same is hereby, dissolved and the bill of complaint dismissed, and that the defendants do recover their costs, to be taxed.

Approved.

(Signed) JNO. BAXTER.

212 In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUF'G CO., Complainant,

vs:

THE CHALLENGE CORN-PLANTER CO., Defendant.

To the honorable the judges of the circuit court of the United States for the western district of Michigan, southern division:

The petition of the Farmers' Friend Manufacturing Co., the above-named complainant, showeth—

First. That on or about the first day of March, 1884, it filed its bill of complaint against the above-named defendant, alleging, among other things, that one Michael Runstetler was the original and first inventor of certain improvements in corn-planters, for which letters patent of the United States had been issued August 10, 1880, and that upon due surrender thereof reissue letters patent No. 10155 had been issued to your petitioner July 11, 1882, as assignee of said Runstetler, and of which your petitioner was the sole owner, and that the first three claims thereof had been infringed by the defendant.

213 Second. That the defendant appeared and answered.

Third. That on or about the 29th day of March, 1884, the cause came on to be heard before his honor Judge Withey upon a motion for a preliminary injunction, and was argued by counsel for both parties, and his honor, by an opinion filed, found said invention to be novel and useful and said reissue valid, and by an order allowed the injunction as prayed.

Fourth. That on or about the — day of June, 1884, said cause came on for hearing before his honor Judge Withey upon a motion to dissolve said injunction, and was argued by counsel for both parties, and his honor, by an opinion filed and an order made, confirmed his former decision as to the novelty of such invention and the validity of such reissue, and refused to dissolve said injunction.

Fifth. That issue was joined and testimony taken on behalf of both parties.

Sixth. That on or about the 18th day of November last said cause came on for final hearing, upon pleadings and proofs, before their honors Judges Baxter and Withey, and was argued by counsel for the respective parties.

Seventh. That on about the 12th day of January, 1885, his honor Judge Baxter filed his opinion in said cause, in which it is found that said defendant's corn-planter is an infringement of said reissued

letters patent, but the said opinion also holds that said reissue is not valid, for the reason that the first three claims thereof are an expansion of the first claim in the original letters patent No. 231,104.

And your petitioner respectfully submits that under the rule
214 of law, as stated in decisions of several circuit courts before the date of said hearing, said Runstetler and your petitioner had a right, by reissue, to enlarge the scope of the claims within the limits of the invention; and your petitioner shows that since said hearing the supreme court, by an opinion delivered December 1, 1884, in Mahn *vs.* Harwood, have discussed the rights of patentees to enlarge their claim of invention by reissue, wherein it is held that such may be done under certain circumstances shown to exist in this case.

Eighth. That the statement of the invention in the specification of said original patent is in the words following:

"My invention relates to an improvement in corn-planters of the class employing a main frame mounted on wheels, which main frame is combined with a runner frame in front and so attached to the main frame that it may be either a rigid or yielding planter, and also employing cone gears and driving chains to actuate the dropping mechanism for planting and adapted to be used either as a rigid or yielding planter.

"My improvement consists, first, in the arrangement of a lifting hand lever mounted upon a shaft and connected to the foot lever centrally pivoted to the main frame, the forward end of which lever is hinged to the runner frame, and the several parts being so arranged that the runner frame may be controlled by either the hand lever or foot lever, or both, at the will of the operator, the hand lever being combined with detachable fastening devices, so as to be set in proper position to form a rigid planter, and so that the fasten-
215 ing devices can be dispensed with and the hand and foot levers used to control the operation of the machine when used as a yielding planter.

* * * * * * *

"When it is desired to operate the machine as a yielding planter the locking device D is thrown out of connection with the segment plate and secured by a hasp, D, the hand and foot levers then being free to vibrate with the runner frame and under control of the operator. When the locking devices of the lifting lever D are brought into operation the operator sets the runner frame in any given position by means of lever D, the lock lever holding it rigid, but under easy control of the hand; or the foot lever may be used to assist in raising or lowering the frame, and the weight of the driver may be thrown upon the foot lever to force the runners into the ground, if necessary."

That the first claim of said original patent is in the words following:

"I claim—

"1. In a corn-planter having the rear main frame mounted on supporting wheels, the front runner frame hinged or pivoted to the

main frame and operated by an elevating and depressing lever pivoted to the main frame, having its front end slotted and connected to the runner frame by a bolt passing through said slot, in combination with the shaft *d* and the lifting hand lever D, rigidly attached to said shaft, for elevating, depressing, and controlling the runner frame, substantially as herein set forth."

216 And your petitioner shows that said reissue was duly applied for and within a reasonable time and was issued before the said defendant commenced the manufacture of corn-planters; that the drawings in said reissued patent No. 10155 are identically the same as in said original patent; that the specification and description of said invention are, with the exception of a few slight verbal and immaterial changes, the same as in said original, but that the three first claims in said reissue patent, which are alleged herein to be infringed by said defendant, are in the following language:

"1. In a corn-planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, the combination of a foot treadle and a hand lever adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners, substantially as herein set forth.

"2. In a corn-planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, a foot treadle for elevating or depressing the runner frame, in combination with a hand lock lever, the foot treadle and hand lever adapted to be used in conjunction for forcing and locking the runners into the ground or lifting and locking them out of the ground, substantially as herein set forth.

"3. In a corn-planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, a foot treadle for elevating or depressing the

217 runner frame, in combination with a hand lever rigidly connected therewith, that either hand lever or treadle may be used for forcing the runners into the ground or lifting them out of the ground, substantially as herein set forth."

Ninth. And your petitioner further shows that said opinion of his honor Judge Baxter finds that said first claim of said original patent "ought, in view as well of its own terms as of the correspondence relating thereto, which passed between the office and the inventor's solicitors, shown by the file wrapper, to be restricted to the specific combination therein described. This was all to which the inventor was entitled, everything else having been anticipated by others. Thus construed, the defendant's planter is not an infringement of the original patent. This was conceded by the complainant's expert in his testimony and by counsel in the argument of the cause."

And your petitioner shows that said finding is erroneous, and that not only was no such concession made by such expert or by counsel on the argument, but, on the contrary, said expert testified (complainant's printed record, p. 18):

"64 X Q. I now show you letters patent No. 231,104, being the

original of reissue 10155, and ask you whether you find any claim in said original which would be infringed by Exhibit 'Challenge Rotary Drop.'

"A. I am not a court to decide questions of infringement, but, as an expert merely, I would say that the question of whether 'Challenge rotary drop' infringed the first claim of the patent 231,104 would depend upon the construction which a court might give to the
218 words in that claim as follows: 'Having its front end slotted and connected to the runner frame by a bolt passing through said slot.' My own construction of it would be such that I would consider it an infringement."

And counsel in their argument strenuously contended that defendant's said corn-planter was an infringement of said original patent; and your petitioner alleges that inasmuch as said reissue in nowise enlarges the scope of said invention, but only enlarges the claims in said original patent "so as to make them extend to the limits of the invention," that said reissue is valid, and your petitioner verily believes that the opinion of his honor Judge Baxter would not have held otherwise but for the fact that he fell into error as to the testimony of the complainant's said expert and the position of counsel on the argument of said cause as aforesaid.

Tenth. That on or about the 7th day of February, 1885, his honor Judge Withey filed his dissenting opinion herein, in which he finds as questions of fact that neither said expert nor counsel conceded that defendant's machine was not an infringement of the first claim of said original patent; that everything else except the specific combination of said first claim of the original patent had not been anticipated by others, and finds as matters of law that said invention was not restricted to the specific combination of said first claim of the original patent, and that such combination therein claimed was not all that the inventor was entitled to claim, and that said reissue was valid.

Eleventh. And your petitioner further shows that at the
219 hearing of said cause a large number of corn-planters and patents were introduced in evidence to show the improvements in corn-planters and the devices employed in operating them more successfully by means of combined hand levers and foot treadles, but the only exhibit which was regarded by the court as tending in any degree to show an anticipation of the invention by said Runstetler, as your petitioner verily believes, and as appears from the dissenting opinion of the district judge, was the Defendant's Exhibit "Evans Corn Drill and Planter;" that the said exhibit was not pretended by the said defendant —, and was not in fact, a practical working machine, but had been constructed, for the purposes of this case, to represent a machine which it was claimed had once existed. Defendant's witness, Austin C. Evans, who constructed said machine and exhibit, on page 134 of the defendant's printed record, testifies as follows on cross-examination:

"56 X Q. The Exhibit 'the Evans Corn Drill and Planter' has been constructed specially to illustrate the original, which was destroyed, has it not?

"A. It has—except one part."

The one part referred to by the witness is shown by his other testimony to be a small piece of iron, which he calls a latch and which was found shortly before the witness testified in a pile of scrap iron; that the machine which the said exhibit was intended to represent was stated by the defendant's witnesses to have been constructed in the spring of 1878; that it was used for planting corn upon one occasion, and one only, during the spring, after which it was
220 returned to the shops of its manufacturers at Springfield, Ohio, and was cast aside and never used a second time; that the factory in which said machine was was destroyed by fire in 1882, and said machine, with the exception of the wrought-iron latch aforesaid, was destroyed at that time; that the exhibit used in this case was manufactured for the purpose of representing the machine thus destoyed in 1882, and was so stated by defendant's witnesses; that the entire testimony relating to said exhibit rested in the recollection of the witnesses only, and related to matters which had transpired fully six years prior to the time of testifying. It was a single machine and without a duplicate and was, as your your petitioner verily believes, nothing more than an abandoned experiment, if it was even that, and the undisputed testimony in the case shows that it was never a practical machine; and your petitioner says, on information and belief, that the said machine represented by the Exhibit "Evans Corn Drill and Planter" constitutes what is referred to by his honor Judge Baxter in his said opinion as anticipating the invention of said Runstetler, and was the only evidence shown upon the hearing of said cause which addressed itself to the judges as tending in any degree to show an anticipation of said invention; that the said exhibit could not be operated successfully at the said hearing, and the difference between it and complainant's corn-planter is well stated in said dissenting opinion to be the difference between failure and success. And your petitioner respectfully submits that a valuable invention, such as is shown in said reissue letters patent, should not be invalidated or destroyed
220¼ by an abandoned experiment, which rests only in the hazy and uncertain recollection of witnesses and is not supported by any memorandum or certain evidence.

Twelfth. And your petitioner shows unto your honors that the said invention is very useful and of the greatest utility, as appears by the proofs in this cause; that your petitioner has expended large sums of money, amounting to many thousands of dollars, for buildings, machinery, and materials to supply the demand for said invention, and is now prepared to do so and has made many contracts for the delivery of machines for the coming season, but since the publication of the decision of his honor Judge Baxter other manufacturers are offering to make and sell said invention, and, in consequence, some of your petitioner's orders and contracts have already been revoked; that if your petitioner is compelled to await the correction of the errors herein set forth by an appeal to the Supreme Court of the United States a final decision herein by said Supreme Court cannot be had, as your petitioner is advised and believes, be-

fore 1888; that pending said appeal all manufacturers will be at liberty to use the device described and claimed in said reissue patent, and that, owing to the great popularity of the improvement, very many persons will engage in the manufacture thereof, and that thereby your petitioner will be subjected to unfair competition, its business will be ruined, and the investments aforesaid will be either rendered entirely valueless or, at least, greatly depreciated in value; and if said Supreme Court should, as your petitioner verily believes it would, pronounce said reissue valid the
220½ infringement of petitioner's rights therein will have become so general and widespread that it will then be utterly impossible for your petitioner to check the same or to recover the damages it will have suffered thereby, and all rights secured by said reissue will be utterly and forever lost to your petitioner.

Wherefore your petitioner, conceiving that this cause and the matters above mentioned are proper to be reheard before your honors, humbly prays that the said cause may be reheard, and that a decree finding the validity of said reissue and making perpetual the injunction against the defendant may be granted; and for such other orders and findings as to your honors may seem meet and the circumstances of the case may require; and your petitioner will ever pray, etc.

FARMERS' FRIEND MANUFACTURING CO.,
By E. W. WITHEY,
Its Agent and Solicitor.
WOOD & BOYD AND
EDWARD W. WITHEY,
Solicitors and of Counsel for Petitioner.

221 UNITED STATES OF AMERICA, }
Western District of Michigan, Southern Division, } *ss:*

On this 23d day of February, A. D. 1885, personally appeared before me Edward W. Withey, to me known to be the person who subscribed the foregoing petition, and who, having been by me first duly sworn, did depose and say that he is one of the solicitors for said complainant, and signed said petition for it and in its behalf and is authorized so to do; that said petition is true of his own knowledge, save as to the matters which are therein stated to be on information and belief, and as to those matters he believes it to be true.

WILLARD F. KEENEY,
Notary Public in and for Kent County, in said District and Division.

[Endorsed:] Petition for rehearing. Filed Feb'y 24, 1885. H. M. Hinsdill, clerk. Refiled March 4, 1885. John McQuewan, dep. clerk.

222 *Orders.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } ss:

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 2 day of March, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and ninth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,
vs.
THE CHALLENGE CORN-PLANTER COMPANY, Defendant. } No. 789.

This cause came on to be heard upon the complainant's petition for a rehearing, counsel for the respective parties being present, and it appearing that a proper consideration of said petition involves a hearing on all the merits of said cause the same as a rehearing, and it being requested by counsel that said petition be heard before the presiding justice of this court and one or both of the other judges, and it being considered inexpedient to hear and determine the matter of said petition at the present term of said court, it is ordered that the final decree heretofore entered herein be vacated and set aside, and that said cause be continued until the next term of said court without prejudice to the right of either party to apply to the court for such proceedings in said cause as counsel may advise.

223 *Orders.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } ss:

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 3 day of March, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and ninth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,
vs.
THE CHALLENGE CORN-PLANTER COMPANY, Defendant. } No. 789.

In this cause, the final decree entered herein having been vacated and set aside, in order that the petition for rehearing filed by said

complainant herein may be heard and determined at the present term of said court, and counsel for the respective parties being present, on motion of Edward Taggart, Esq., one of the solicitors for said defendant, it is ordered that the said final decree be now re-entered as of this date without prejudice to the rights of said complainant to file its petition for rehearing, and, on motion of Edward W. Withey, one of the solicitors for said complainant, it is ordered that said complainant have the right to file its petition for a rehearing of said cause or to refile the petition already filed herein at its election.

224 *Orders.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } ss:

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 3 day of March, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and ninth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,
vs.
THE CHALLENGE CORN-PLANTER CO., Defendant. } No. 789.

This cause came on to be heard upon the pleadings and proofs and arguments of counsel, and the court, being fully advised, doth find that the equities are with the defendants, and it is ordered, adjudged, and decreed that the temporary injunction heretofore granted in this cause be, and the same is hereby, dissolved and the bill of complaint dismissed, and that the defendants do recover their costs, to be taxed.

Approved.

(Signed) JNO. BAXTER.

225 *Orders.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } ss:

U. S. Court.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 4 day of June, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and ninth—present, the Honorable Stanley Matthews, associate justice Supreme

Court—among the proceedings then and there had were the following, to wit:

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,
vs.
THE CHALLENGE CORN-PLANTER COMPANY, Defendant. } No. 789.

The petition for a rehearing of said cause, on file herein, came on to be heard, and it appearing that the allowance of the prayer of said petition involves a rehearing of said cause upon its merits and a review of the decision of the circuit judge heretofore made herein, both upon questions of law and of fact, and it being deemed inadvisable to rehear said cause upon its merits and to review said decision, the prayer of said petition is therefore denied.

The said complainant, by its solicitors, prays an appeal from the final decree heretofore entered herein to the Supreme Court of the United States, which is allowed, and the penalty of its bond is fixed at one thousand dollars.

226 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan. In Equity.

THE FARMERS' FRIEND MANUFACTURING COMPANY, Complainant,

vs.

THE CHALLENGE CORN-PLANTER COMPANY, Defendant.

Know all men by these presents that we, The Farmers' Friend Manufacturing Company, a corporation organized under the laws of the State of Ohio and doing business at Dayton, Ohio, the complainant above named, as principal, and Frank E. Brown and John Sehler, both of Grand Rapids, Michigan, in said district and division, as sureties, are held and firmly bound unto The Challenge Corn-Planter Company, a corporation organized under the laws of Michigan, the defendant above named, in the penal sum of one thousand dollars ($1,000.00), lawful money of the United States of America; for the payment of which we bind ourselves, our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

227 Sealed with our seals. Dated the 17th day of June, 1885.

The condition of the foregoing obligation is such that whereas a final decree was rendered in said cause by said court on the 19th day of February, A. D. 1885, and re-entered therein on the 3rd day of March, 1885, dismissing said complainant's bill of complaint, with costs to said defendant;

And whereas said complainant, considering itself aggrieved thereby, has heretofore prayed an appeal from said decree to the

Supreme Court of the United States, which was heretofore and on the 4th day of June, 1885, duly allowed:

Now, therefore, if the said complainant shall duly prosecute its said appeal with effect and, moreover, pay the amount of costs and damages rendered and to be rendered in case the said decree shall be affirmed, then the foregoing obligation shall be null and void; otherwise to remain in full force and virtue.

FARMERS' FRIEND M'F'G CO.,
By B. KUHNS, *Pres.* [SEAL.]
FRANK E. BROWN. [SEAL.]
JOHN SEHLER. [SEAL.]

Attest: V. P. VAN HORNE, *Sec'y.*

228 UNITED STATES OF AMERICA, } *ss:*
Western District of Michigan, }

Before me, on this 20th day of June, 1885, personally appeared John Sehler, one of the sureties in the annexed bond, who made oath that he is worth the sum of one thousand dollars in property not exempt from execution over and above his just debts and liabilities.

[SEAL.] JOHN McQUEWAN,
Deputy Clerk U. S. Circuit Court, West. Dist. of Mich.

UNITED STATES OF AMERICA, } *ss:*
Western District of Michigan, }

Before me, on this 27th day of June, 1885, personally appeared Frank E. Brown, one of the sureties in the annexed bond, who made oath that he is worth the sum of one thousand dollars in property not exempt from execution over and above his just debts and liabilities.

[SEAL.] JOHN McQUEWAN,
Deputy Clerk U. S. Circuit Court, West. Dist. of Mich.

I hereby approve of the foregoing bond.

S. L. WITHEY,
Dist. Judge

[Endorsed:] U. S. circuit court, west. dist. Mich., so. div. In equity. Farmers' Friend M'f'g Co., complainant, *vs.* Challenge Corn-Planter Co., defendant. Supersedeas bond. Filed June 27, 1885. H. M. Hinsdill, clerk.

229 United States Circuit Court, Western District of Michigan, S. D. In Equity.

THE FARMERS' FRIEND M'F'G CO. }
vs. } 789.
THE CHALLENGE CORN-PLANTER CO. }

It is agreed that the annexed printed testimony shall be considered a true copy of the original on file, and the clerk is requested to

certify the same, together with the annexed file wrappers and copies of patents, to the Supreme Court as a part of the transcript.

June 13, 1885.

WOOD & BOYD,
Solicitors for Compl't.
STEM & PECK,
Solicitors for Defendant.

230 *Stipulation.*

United States Circuit Court, Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND M'F'G CO.
vs.
THE CHALLENGE CORN-PLANTER CO.

For the purpose of saving expense, it is hereby stipulated by and between the parties to this cause as follows:

1. That the corn-planter marked "Complainant's Exhibit Challenge Rotary Drop" was made and sold by the defendant at Grand Haven, in said district, and correctly represents other planters made and sold by it in the usual course of business between the date of the reissued letters patent sued on and the filing of the bill herein.

2. That any notary public or other duly authorized officer for the taking of testimony may act as special examiner for the taking of proofs herein, and that the testimony shall be taken by question and answer.

Dated June 20, 1884.

WOOD & BOYD,
Solicitors for Complainant.
EDWARD TAGGART,
Defendant's Solicitor.

Examination of witnesses on behalf of the complainant, under the 67th rule, in equity, as amended, pursuant to the annexed notice and stipulation.

231 Present: Edward Boyd, for the complainant, and Arthur Stem, for the respondent.

By request of parties, it is ordered that the depositions be taken by question and answer.

William B. Richards.

WILLIAM B. RICHARDS, a witness produced on behalf of the complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by EDWARD BOYD, Esq., of counsel for the complainant, as follows:

1 Q. State your name, age, residence, and occupation.

A. My name is W. B. Richards; age, 54; residence, Galesburg, Illinois; my occupation is solicitor of patents and expert in patent cases.

2 Q. What have been your opportunities of becoming familiar with and understanding patents for corn-planters?

A. In the course of my business I have prepared a great many applications for corn-planter patents and for reissues of various corn-planter patents. I have frequently made examinations of the various patents for corn-planters, and prior to the fire in the Patent Office have several times examined all the models of corn-planters in that office. I have been called on by various manufacturers to prepare opinions in reference to numerous corn-planter patents, and as to the state of the art in connection with such patents, to be used in suits in court and for various other purposes. I have conducted several interference cases in connection with corn-planter patents and applications therefor, and have acted as expert in United States courts in several patent cases.

3 Q. What have been your opportunities for becoming familiar with corn-planter machines?

A. For many years I have paid particular attention to all classes of corn-planter machinery. I have been in several factories and seen the various operations in making them. I have seen
232 and examined a great many of them at State and county fairs and on sale in many places. I have had occasion to examine a great many different planters in preparing opinions and in acting as expert in different cases, and have seen various planters operate in the field, and also operated them myself. My office is across the street from one of the most extensive corn-planter manufactories in the world, in which I have had occasion to frequently very critically examine various corn-planters manufactured by other parties and obtained by that manufactory for various purposes.

(Counsel for complainant here offers in evidence reissue letters patent No. 10155, dated July 11, 1882, and issued to the complainant, as the assignee of Michael Runstetler, as a reissue of letters patent dated August 10, 1880.)

4 Q. Have you examined said reissue letters patent No. 10155; and, if so, do you understand the principle of construction and mode of operation of the invention as therein shown, described, and claimed.

A. I have examined the reissue patent referred to in the question, and believe I understand its principle of construction and mode of operation.

5 Q. Have you examined the defendant's corn-planter, marked "Complainant's Exhibit Challenge Rotary Drop;" and, if so, do you understand its principle of construction and mode of operation?

A. I have examined the exhibit referred to in the question, and believe I understand its principle of construction and mode of operation.

6 Q. Please institute a comparison between the improvement specified in the first claim of said reissue and the defendant's said planter and state how they agree or differ, and give your reasons for any opinion you may express.

A. In order that the comparison which I may make between the invention recited and claimed in the first claim of the reissue 10155 and the Exhibit Challenge Rotary Drop may not be
233 misunderstood, I will first state what I consider the invention to be which is recited and claimed in said first claim of the reissue.

As stated in the claim, the invention therein recited has reference to a combination of parts to be used in a corn-planter of that class in which a rear main frame mounted on supporting wheels is hinged to a front runner frame. The combination recited in the claim is a foot treadle, which may be used and operated by the feet of the operator for the purpose of elevating the runners, and also for the purpose of depressing the runners to force them into the ground, and a "hand-lever adapted also to raise or elevate the runners when desired, and further adapted to force them into the ground or depress them, the adaptation of these parts further being such that the operator may use the hand lever and foot lever in conjunction, and thereby use the force derived from both his hands and feet both to force the runners into the ground when desired and to elevate them when desired or required; or when less force is required the operator may both elevate and depress the runners with his feet alone, acting on the foot lever or with the hand lever alone, moving it by means of his hands. As shown and described in said reissue, the hand and foot levers are made to act in "conjunction," as recited in this first claim, by means of being connected with each other, and having one and the same connection to the forward frame.

In the Exhibit "Complainant's Exhibit Challenge Rotary Drop" I find the same class of corn-planter shown and described as in this reissue patent and recited in the first claim thereof. I also find both a hand lever and a foot lever connected with each other and connected by one and the same connection to the forward frame, and adapted to act together in such manner that the operator may use the foot lever to raise and elevate and also to depress the runners, and may use the hand lever for the same purpose, and, when desired or necessary, may use both of said levers in conjunction to both raise and depress the runners of the planter. In fact, I
234 find in this exhibit every element or part recited in the first claim of the reissue patent 10155, and the elements or parts of the exhibit are combined in such manner that each element or part performs the same function as recited in the first claim of this reissue, and the elements or parts of the exhibit in combination also perform the same function in substantially the same manner as they do in combination, as recited in said first claim.

7 Q. Please make a similar comparison between the invention recited and claimed in the second claim of said reissue and said Exhibit "Complainant's Exhibit Challenge Rotary Drop."

A. For reasons given in the first paragraph in last answer, I will state what I consider to be the subject-matter of the second claim of the reissue 10155. Briefly stated, the second claim is for a combination of the same parts as the first claim, with the introduction of the further feature or part in the second claim of a lock, by means of

which the hand lever may be locked to the main frame of the planter and thereby held in such manner as to hold both the hand lever and the foot lever, and thereby lock the front and the rear frames of the planter to each other and prevent any vertical flexure between them, so that the additional function may arise of holding the runners firmly in the ground when desired or required and of lifting and locking the runners out of the ground when desired or required.

In the exhibit referred to in the question a lock is used in connection with the hand lever, which is the same kind of a lock, operates in the same manner, and performs the same functions in combination with the foot and hand levers and the other parts of the planter as does the lock recited in the second claim of the reissue 10155; hence I find in the exhibit all the elements recited in the first claim of this reissue, and, further, also recited in the second claim thereof, and also find the additional element recited in the second claim of the reissue, and further find each and all the
235 elements, including the additional element of the lock, adapted to perform the same functions, severally and in combination, in the exhibit as recited in the second claim of the reissue.

8 Q. Please make a comparison between the invention specified in the third claim of said reissue and said Exhibit "Complainant's Exhibit Challenge Rotary Drop" and state the points of resemblance or difference which you find, giving your reasons for such opinion as you may express.

A. For the reasons stated in the first part of my answer to question 6, I will state what I consider to be the subject-matter of the third claim of the reissue 10155. The same elements are recited in this third claim as recited in the first claim, and their combination is the same in the third claim as in the first claim; the elements or parts recited in the third claim perform the same functions, separately and in combination, as performed by the same elements or parts, separately and in combination, in the first claim. In the third claim a special feature is recited which is not found in the first claim—that is, that the hand and foot lever are rigidly connected with each other.

In the exhibit referred to in the question I find all of these elements arranged to operate separately and in combination in the same manner and for the same purpose as in the third claim of the reissue 10155. I further find in the exhibit the means for connecting the hand and foot levers rigidly to each other, when in operation, in such manner as to cause them to act together in precisely the same manner as they are caused to act together by their rigid connection recited in this third claim. This difference in the manner or method of producing rigidity between the hand and foot levers in the exhibit from the manner of producing rigidity between them, as shown and described in the reissue, does not affect their operations or functions in the least, in so far as they are recited in the third claim, and as no specific method is recited in the
236 claim for producing the rigid connection between the hand and foot lever, I do not construe the claim as limited in the least

to any specific method or means of producing that rigid connection between said levers; hence I find the same combination of levers with the same special rigid connection in the exhibit as recited and claimed in this third claim, having the same functions arising from the rigid connection of the levers in the exhibit as in said claim.

(Counsel for complainant herein states on the record that no decree will be asked on any of the claims of the reissue except the first three.)

Cross-examination:

10 X Q. Were you not retained by the Deere & Mansur Company, or some one representing them, to testify as an expert in the case brought by these same complainants against the Wait Manufacturing Company?

A. No, sir.

11 X Q. Did not Mr. Atkinson communicate with you in relation to that case?

A. It may be possible that he has mentioned the case to me, but neither he nor any member of the firm of Deere & Mansur Company, either by letter or any other manner, ever said anything to me in reference to testifying as an expert in that case that I now have recollection of.

12 X Q. Was there anything said to you about any other case in which the reissue here sued on was involved?

A. Yes, sir; there was. I was retained in a suit under the reissue against Deere & Mansur Company.

13 X Q. Did you give them a verbal or written opinion on the reissue here sued on?

A. I never gave them a written opinion nor a verbal opinion unless the fact that I advised them that they had better compromise the matter could be construed as an opinion.

14 X Q. When did you give them that advice?

237 A. Immediately after I had first seen all their defenses; some time last winter; I think it was in January last.

15 X Q. Did you advise them to settle on any terms upon the ground that they were likely to be defeated in a trial, or because special inducements were offered that made a settlement more desirable than a contest?

A. I did not know at the time and do not know yet what inducements were offered them. I thought at the time they ran a great risk of being defeated in the suit, and I think that is the substance of the advice that I gave them.

16 X Q. This advice was given in Chicago, was it not?

A. It was.

17 X Q. On the occasion of a meeting of the defendants and complainants for the purpose of discussing the question of a compromise, was it not?

A. I was there mainly for the purpose of taking depositions in an interference proceeding between the McCormick Harvesting Machine Company and the Minneapolis Harvester Works, and my rec-

ollection is now that Mr. J. R. Bennett, of New York, had written me that he would be there at that time, and desired to consult me in the case referred to and some other cases, and that Deere & Mansur would at that time have several corn-planters there for me to examine. I don't remember that he stated to me the parties would meet there for the purpose of a compromise, or that any one else so informed me. I have an indistinct recollection, however, that there was an intimation of something to that effect in some of his letters.

18 X Q. Parties did meet there and did compromise the case, did they not?

A. They did meet there, and it is my understanding that they compromised at that time.

19 X Q. There was at that time pending a suit brought by Deere & Mansur Co. against the Farmers' Friend M'f'g Company on
238 the Atkinson patent, which was compromised at the same time and was one of the elements in the settlement or compromise, was it not?

A. I was not retained in that suit and I know nothing about it, but I believe I have heard there was such a suit talked of or pending, and that some kind of a disposition was made of it at that time, but I don't know what that disposition was.

20 X Q. Did not the Farmers' Friend Co. and the Deere & Mansur Company, the parties to those two suits, enter into a combination at that time?

A. I did not hear their discussion of the matter, except a very small part, possibly as I passed in and out of the room two or three times, but I believe that I understood from some of them that they had partially completed a combination of some kind, the exact nature of which I do not know.

21 X Q. In answer 6 you say, "As shown and described in said reissue, the hand and foot levers are made to act in conjunction, as recited in this first claim, by being connected with each other and having the same connection to the forward frame." Suppose a planter, was constructed with the foot and hand levers not connected to the forward frame by one and the same connection, would it infringe this claim, in your opinion?

A. It would not, unless the connection was made in some manner of which I have no conception at present.

22 X Q. Suppose the hook on "Complainant's Exhibit Challenge Rotary Drop," which connects or is capable of connecting the hand and foot levers, were removed, would the planter then infringe this reissue, No. 10155?

A. As that planter is constructed, if the hook referred to in the question was removed there would be no connection between the hand lever and the foot lever. The hand lever could not then be used at all to raise or lower the forward frame. The two levers could not be used in conjunction, and the planter would not, in my opinion, infringe the reissue patent 10155.

239 23 X Q. Without the hook referred to can the hand lever on Exhibit Challenge Rotary Drop be used to force the runners into the ground?

A. If by the hook is meant the short bar which carries the hook and which is pivotly connected to the hand lever to remove it renders the hand lever inoperative either to raise or lower the runner or to force them into the ground.

24 X Q. By hook I mean hook, and nothing else, and I ask if the hook was removed whether the hand lever would operate to press the runners into the ground?

A. If the question refers to the hook part of the bar alone and does not refer to that part of it which acts on top of the foot lever, then if the hook was removed the hand lever could still be used to force the runners into the ground.

25 X Q. It could be used for that purpose in conjunction with the foot lever, could it not?

A. It could.

26 X Q. Such a construction would not infringe reissue 10155, would it?

A. It would not, in my opinion.

27 X Q. What do you understand to be the meaning of the words "in conjunction," as used in the claims in this reissue?

A. I understand it as used in this specification to mean that the levers may be used together, each to aid the other.

28 X Q. Suppose the levers were constructed independent of one another, so that the operator might use one without operating the other or if he chose might use both at the same time, would such a construction infringe this patent?

A. I think not.

29 X Q. Is it not essential in this patent that when one lever is used or operated the other must of necessity move or operate with it?

A. Being, as they are, connected to the runner frame by the same connection, it is.

240 30 X Q. In the third claim of this patent is there any element not found in the first except the feature of the rigid connection between the two levers?

A. There is not.

31 X Q. Is not this rigid connection between the two levers to be understood in construing the first claim?

A. I think not. It is the specific feature in the third claim, but a connection between the levers which was not entirely rigid but which would still permit of all the functions of the levers must be understood in the first claim.

32 X Q. The construction covered by the first claim involves such a connection between the two levers that when one moves the other must move, does it not?

A. It involves such a connection between the two levers that when one is moved sufficiently to raise or lower the front frame to any practical extent the other will also move and can be moved to aid it, but that connection between the levers need not be such as to prevent either of them moving to a slight extent without moving the other.

34 X Q. The nature of the machine is such that when either

of the levers is operated during the operation the relations of the two levers—that is, their connection—is rigid, is it not?

A. It is.

35 X Q. Is not that the sense in which the word rigid is used in the third claim?

A. I think not, else there would be no difference between the first and the third claim.

36 X Q. In the second claim of reissue 10155 the only element not found in the first is the locking device in connection with the hand lever, is it not?

A. It is.

37 X Q. Are not hand lock levers such as described in this patent old?

A. No, sir; I think not. The hand lock lever described in
241 this patent adapted to operate in conjunction with the foot lever as set forth in these claims is, I think, new.

38 X Q. Is not a hand lock lever constructed to raise and lower the runners operating precisely like the one shown in this patent not connected with a foot lever old?

A. Hand levers for raising and lowering the forward frame of a planter or a runner frame are old.

39 X Q. Have they not for some time prior to the date of this patent been constructed, used, and operated substantially like the one shown in this patent, with the exception of its connection with the foot lever?

A. I don't recall any at present.

40 X Q. Is there anything novel in the peculiar form or operation of this hand lever beyond its connection and relation to the foot lever?

A. No, sir.

41 X Q. Were not foot levers constructed like the one shown in this patent but not connected with the hand lever old prior to the date of this patent?

A. A similar foot lever is shown in patent granted to J. W. Atkinson March 9, 1880, No. 225,318.

42 X Q. You were the solicitor who took out this patent, were you not?

A. I was.

43 X Q. Hand lock levers constructed to raise and lower the front runner frame of corn-planters constructed and operating substantially like the one shown in this reissue, except for its connection with the foot lever, were old in 1880, were they not?

A. I do not recall any.

44 X Q. What is there novel about the construction and operation of this hand lever aside from its connection with the foot lever?

A. There is not anything claimed in the reissue 10155 as novel in it aside from its combination with the foot lever.

242 45 X Q. Then the invention covered by the first, second, and third claims of this reissue relates merely to the connection

and relation of the two levers, the levers themselves independently being old; is this correct?

A. The invention recited in the claims referred to in the question involves the combination of the two levers, but I have not said that either the foot or hand lever used alone was old.

46 X Q. Are not substantially such levers used independently old?

A. A foot lever adapted to raise and lower the forward frame and also depress it is, I think, somewhat older than the Atkinson patent, to which I have already referred, but I do not just now recall any old hand lever which was constructed substantially as shown in this reissue and which was adapted to raise and lower and depress the forward frame and to be locked as is the hand lever in the reissue.

47 X Q. The lever in reissue 10155 is attached to the front runner frame by means of a slot and roller; do you consider that means of connection the same or the equivalent of a link connection?

A. I consider it a full equivalent of the link connection in the use to which both are applied in these corn-planters, as both perform the same functions.

48 X Q. I now show you a cut of the corn-planter, with a hand lever connected to the front runner frame by means of a link instead of a slot, and ask you if the lever shown in said cut is not substantially the same as the hand lever in reissue 10155, considered aside from the connection with the foot lever.

A. The cut is not very clear and it cannot be told with certainty from it just how it is mounted and connected with the rear and forward frames, but I think it is substantially the same lever as the hand lever shown in the reissue 10155, without reference to the foot lever.

49 X Q. Assuming that the planter shown in this cut to
243 have been made prior to the Runstetler patent sued on, I ask you whether, in view of said planter having such a hand lever—Atkinson patent and others having the foot lever like the one shown in reissue 10155—what there is new in the first three claims of this reissue, except possibly the manner of connecting the two levers?

A. In view of the state of facts assumed in the question there would be new the combinations recited respectively in each of the three claims.

(Said sketch is offered in evidence and marked Defendant's "Exhibit Hand Lock Lever.")

50 X Q. If, prior to the date of this patent, a hand lever and foot lever had been rigidly connected in one machine for raising and lowering in conjunction, would there then be anything novel in the first three claims of this reissue?

A. It would not affect either of the three claims, in my opinion. It would not affect the first claim, because neither lever, as described in the question, would be adapted to depress or force the runners into the ground, and, further, because neither lever, as described in the question, is connected to the forward frame by the same connection as the other lever.

It would not affect the second claim for the same reasons and for the further reason that the hand lever described in the question is not a lock lever, and it would not affect the third claim for the same reasons given as to why it would not affect the first claim.

51 X Q. If, prior to the date of this patent, a lock hand lever for raising and lowering and depressing and a foot lever for the same purpose were combined in the same machine and rigidly connected together so as to be used in conjunction or independently, would there then be anything new in the first three claims of this reissue?

A. It would depend, in the first place, upon what these levers were used to raise and lower and depress. Levers are used in corn-planters to raise and lower and depress the scrapers.

244 52 X Q. You stated in answer 46 that a foot lever independent of the hand lever, such as shown in the patent, is somewhat older than the one shown in the Atkinson patent. Can you mention some older ones like the one shown in the drawing of this reissue or the Atkinson patent?

A. I have not the copies of this class of patents present, neither have I any digest of them, nor the Patent Office reports present to refer to, and I cannot now designate any particular patent to which I referred.

53 X Q. I now show you and offer in evidence letters patent of the United States No. 167,612, granted J. Kelly September 14, 1875, and ask you whether the corn-planter there shown would infringe either of the first three claims of reissue 10155.

(Objected to as irrelevant and incompetent.)

A. It would not, in my opinion.

54 X Q. In a planter constructed in accordance with that patent the hand and foot levers are capable of being rigidly joined for jointly raising or lowering the front runner frame and for locking the same either in or out of the ground, are they not?

A. The hand and foot lever, as shown in the Kelly patent, may be connected with each other by a latch or hook bar in such manner that they may be used jointly to raise and lower the forward runner frame and to lock the forward frame out of the ground, but while so connected by the latch or hook bar as to be used for those purposes they cannot, either separately or jointly, be used to depress the runner frame or force the runners into the ground, and while so connected in operation if it became necessary for the operator to force the runners into the ground he would have to disengage the latch or hook bar, then re-engage it on its other side with the foot lever, when he might use the hand lever alone to force the runners into the ground, but could not use the foot lever for that pur-

245 pose in conjunction therewith without rising from his seat, walking forward on the planter, and placing his foot on the forward end of the foot lever, which would not, in my opinion, be a very practical operation.

56 X Q. Suppose there was on the foot lever in front of the point at which it is pivoted to the frame a piece extending up within reach of the driver's feet, provided with a foot plate, would the con-

struction and operation then be equivalent to that shown in reissue 10155?

A. It would not; mainly because, as I stated before, the combination is such that the device is not capable of performing the various functions without a change made in connecting the hand and foot lever, which involves an operation that would render the machine impracticable.

58 X Q. Suppose the latch B was attached positively or rigidly to the foot lever at any convenient point and the part added to the foot lever as described in question 56, would it not then perform all the functions in substantially the same manner as claimed in the first three claims in reissue 10155?

A. If the latch B was rigidly connected with the foot lever the device could not operate at all. It would be necessary in order to make it operative to either connect it with the foot lever by two different connections, as shown in the patent, or else connect it therewith in a manner similar to that in which the latch connects the hand and foot levers in Complainant's Exhibit "Challenge Rotary Drop."

59 X Q. I will change the word rigidly in the last question to the words by means of a pivot and ask you to answer the question so changed.

A. No, sir; it would not, for the main reason that it could not be pivoted at any one point in the latch bar and perform these different functions. In order to adapt it to raise the runner frame and lift it above the ground, as the Kelly device is organized, the connection between the latch and foot lever must be at a point on the latch considerable lower than that point at which the latch
246 must be hinged or pivoted to said foot lever in order to force the runners into the ground unless such an extent of sweep was given to the hand lever that its use would not be practical.

Adjourned until to-morrow morning, Thursday, July 17, 1884.

THURSDAY, *July* 17, 1884.

Met pursuant to adjournment, and further taking of depositions was continued.

60 X Q. In your last answer you say that the construction therein described, viz., the construction shown in the Kelly patent with the changes, consisting of the attachment to the front lever in front of the point at which it is pivoted to the frame of a piece extending upward within reach of the driver's feet, supplied with a foot plate, and the hook or latch B, pivoted to the rear end of the foot lever, would not perform the functions covered by the first three claims, because if so constructed the sweep of the hand lever would be so wide as to make it impractical. I now ask you if that would be remedied by making the points at which the two levers are pivoted to the rear frame nearer together?

(Objected to as immaterial and irrelevant.)

A. If the pivot points of the hand and foot levers were brought so near together that a practical sweep of the hand lever could be used to operate the foot lever connected to the latch or link B by a single pivot point, then I think the leverage would be lost; so much, however, would depend upon different ways the fulcrums of the two levers could be moved in order to bring them nearer together that it would be difficult to say whether they might or not be so arranged by bringing them closer together that they would perform the functions of the three claims. I do not believe, however, that the distance between them could be diminished to produce any such
247 functions while the hand lever is pivoted in rear of the axle and the foot lever in front of it, as shown in the Kelly patent. A reorganization of the parts would, in my opinion, have to be made to adapt the machine shown in the Kelly patent to the functions recited in the three claims of the reissue.

61 X Q. If the pivotal points of the two levers were brought closer together would it not reduce the sweep of the hand lever?

A. If the pivotal point of the foot lever was moved backward it might be made to reduce the sweep of the hand lever, but even then the foot lever, as shown in the Kelly patent, and with the latch pivoted to said foot lever, as stated in question 59, could not be operated at all independent of the hand lever.

62 X Q. If the foot lever was provided with the front piece described in question 59, would your last answer apply?

A. It would.

63 X Q. Do you use the word independent in answer 61 in the sense that it is used in the reissue?

A. I mean that the foot lever could not be used to raise and lower the forward frame when the driver was so circumstanced that he could only use his feet and could not use his hands, as often occurs when his hands are occupied in driving and keeping the team or draught animals in a straight path, and especially if his hands were occupied in driving over obstructions, and when he might find occasion to raise and lower the runner frame to deposit the seed at the proper depth.

64 X Q. I now show you letters patent No. 231,104, being the original of reissue 10155, and ask you whether you find any claim in said original which would be infringed by Exhibit Challenge Rotary Drop?

A. I am not a court to decide questions of infringement, but as an expert merely I would say that the question of whether Challenge rotary drop infringed the first claim of the patent 231,104 would depend upon the construction which a court might
248 give to the words in that claim as follows: "having its front end slotted and connected to the runner frame by a bolt passing through said slot." My own construction of it would be such that I would consider it an infringement.

W. B. RICHARDS.

William H. Lefevre.

WILLIAM H. LEFEVRE, a witness produced on behalf of the complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by EDWARD BOYD, Esq., of counsel for the complainant, as follows:

1 Q. What is your name, age, residence, and occupation?

A. William H. Lefevre; age, 47; residence, Dayton; traveler in the implement trade for the Farmers' Friend M'f'g Co.

2 Q. How long have you been thus traveling for the Farmers' Friend M'f'g Co.?

A. Since April, 1877.

3 Q. Prior to that how had you been engaged?

A. I had been traveling in the reaper trade; commenced in 1870.

4 Q. Were you familiar with the principal corn-planters manufactured in 1879 and some years previous?

A. Yes, sir.

5 Q. Name the principal manufacturers in 1879.

A. Deere & Mansur Co., Brown, Beedle & Kelly, Challenge, Avery, Hearst & Dunn, Keystone, Climax, Union, Rockford.

6 Q. State whether any of these planters of which you were familiar in 1879 employed hand and foot levers combined, to be operated by the driver from his seat, for elevating and depressing the front frame and forcing the runners into the ground; and, if so, which.

(Objected to as irrelevant and immaterial in complainant's *prima facie* case.)

A. The Beedle & Kelly planter was the only one, I believe.

249 7 Q. Are you familiar with the corn-planters generally in the market at the present time or up to last season?

A. Yes, sir.

8 Q. State how many of these employ levers for the purpose and to be operated as mentioned in the preceding question.

A. Well, I will give you the names as near as I can remember. Deere & Mansur, Challenge; Champion, or Beedle & Kelly's planter; Evans & Foos, the Peoria and Keystone. That is all I think of at this time. By the Peoria planter I mean the one made by Hearst & Dunn.

9 Q. How is it with reference to the Richmond Champion?

(Objected to as irrelevant and immaterial.)

A. That has a lever.

10 Q. About how many planters containing the levers has the Farmers' Friend M'f'g Co. made and sold, commencing with the trade of 1880?

(Objected to as irrelevant and immaterial.)

A. About twenty-two thousand.

11 Q. Into what States have these planters been introduced?

(Objected — as irrelevant and immaterial.)

A. New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Kentucky, Ohio, Michigan, Illinois, Wisconsin, Iowa, Nebraska, Kansas, Missouri, Tennessee, Indiana, and different other Southern States—I don't just remember where; and California—we have sold them, too, in California.

12 Q. Have you made an examination for the purpose of approximating the number of patents which were issued prior to 1880 for corn-planters and check rowers; and, if so, what is the number, approximately?

A. I have; yes, sir. The number is about twelve hundred.

(Deposition objected to by counsel for the defendant as irrelevant and immaterial, and cross-examination waived.)

WM. H. LEFEVRE.

250 *"Rebuttal."*

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUF'G CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

Examination of witnesses on behalf of the complainant under the 67th rule, in equity, as amended, pursuant to the annexed notice.

Present: Edward Boyd, Esq., and E. W. Withey, Esq., for the complainant, and C. M. Peck, Esq., for the respondent.

By request of parties it is ordered that the depositions be taken by question and answer.

Samuel D. Fogle.

SAMUEL D. FOGLE, a witness produced on behalf of the complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by E. W. WITHEY, Esq., of counsel for complainant, as follows:

1 Question. State your name, age, residence, and occupation.

Answer. Samuel D. Fogle; age, 35 years; residence, Fairfield, Greene county, Ohio; occupation, farmer.

2 Q. What was your occupation in 1877 and 1878?

A. I was handling farm implements of all kinds, with farming; I done both. In 1877 I lived at Enon. In 1878 I lived at Fairfield, where I do now; moved there in the spring.

3 Q. Did you know the Evans Manufacturing Company of Springfield, Ohio, if that was the name under which they were doing business in 1878?

A. Yes, sir; I did. It has changed—had different names; I think that was the name of it that season.

(It is agreed that the corn-planter shown to the witness
251 is the same in all respects as the Defendant's Exhibit Evans Planter.)

4 Q. Did you ever buy any corn-planters of the Evans Company?

A. Yes, sir.

5 Q. When did you first buy corn-planters of them?

A. I think it must have been in 1878.

6 Q. Were the corn-planters you purchased of them in 1878 similar to the corn-planter shown you this morning—Defendant's Exhibit "Evans Planter?"

A. Yes, sir.

7 Q How many like that did you buy in 1878?

A. I really didn't buy any. I took it out to try and sell for them, and did sell one.

8 Q. What time in the year was it?

A. When I first saw it was some time along in April. I know I had it in my barn about two weeks.

9 Q. Have you sold any of those corn-planters for that concern or its successors since?

A. Yes, sir; every year up to within two years. Two years ago I left off.

10 Q. Have you examined this morning Defendant's Exhibit "Evans Corn Drill and Planter?"

A. Yes, sir; I have.

11 Q. When did you first see a machine constructed like the exhibit?

A. Last week, one day. I guess it was last Wednesday, September 24, 1884.

12 Q. During the years 1877, 1878, and the years following were you or were you not frequently in the factory of the Evans Company, at Springfield, Ohio?

A. Yes, sir; I have been there several times.

13 Q. Did you at any time see there any machine similar to the Defendant's Exhibit "Evans Corn Drill and Planter?"

A. No, sir; I never did.

252 14 Q. Have you been recently in the office of the Evans and Foos Manufacturing Company, at Springfield, Ohio?

A. Yes, sir.

15 Q. When?

A. I was in their shop last week—the 25th, I believe.

16 Q. What was the occasion of your going there?

A. I went for an itemized bill.

17 Q. What did they say to you?

(Objected to as incompetent.)

A. When I went in Mr. Evans was not there. I inquired for him. They said he had stepped out to dinner. They asked my business. When I told them they said they could help me out with

that. The book-keeper went and got some books; said he could give me everything up to the fire—I believe that was the way of it—and the balance he said I would have to wait until Mr. Evans came in. Mr. Evans came in and I told him my business, and he said he guessed he could help me out. He stepped out to a desk; then he came back and asked what I wanted with it; then he stepped back to the desk again; then he came back and said he couldn't go any further. I can't swear positive, but believe that was the words he said, and he said all his books were destroyed—everything. He said he had some unsettled accounts and he would have to jump at the bills to collect them.

18 Q. Did Mr. Evans, during this interview, examine or refer to any books of account in his office, in your presence?

A. He went to the desk, if I took notice right; then he came back. A book was lying on the desk.

19 Q. Did he refer to any book while at the desk?

A. He just took a book, opened it, and laid it right down.

20 Q. Where did he take the book from?

A. Just right above him—right above the desk.

21 Q. What did he say to you just after he had looked at this book?

A. He came back and asked me what I wanted with the bill?

253 22 Q. Did he refer to the book a second time?

A. I think not. He stepped back to the desk and said he couldn't go a bit further, as everything was destroyed by the fire.

23 Q. Did they make up any statement for you at the office?

A. Yes, sir; I had that before he came in.

24 Q. Can you produce it?

A. Yes, sir.

Witness produces the statement and complainant offers it in evidence and marks it "Complainant's Exhibit A."

"COMPLAINANT'S EXHIBIT A."

Monthly Statement.

Ledger folio. SPRINGFIELD, OHIO, *Sept.* 25, 1884.

Mr. S. D. Fogle, Fairfield, Ohio, in account with Evans & Foos Manufacturing Co.

1881.		
Feb. 19		$105 00
April 29		28 50
May 10		30 00
1882.		
March 30, 1 planter		30 00
April 2, 2 "		60 00
May 3, 2 "		60 00
		$313 50

CR.

1881.		
Aug. 29, by cash		$30 00
1882.		
Jan. 11, by note		88 50
" by cash		45 00
Aug. 2, by note		150 00
	$313 50	$313 50

(Objected to as incompetent and irrelevant.)

25 Q. How many corn-planters like the Defendant's Exhibit Evans Planter did you take in 1878?

254 A. I got two; the first I ever got.

26 Q. Did you go to the factory in Springfield at the time you got them?

A. Yes, sir.

27 Q. Did you see any others similar to the ones you got there?

A. Yes, sir; several of them.

Cross-examination:

28 X Q. Where were you, and what were you doing in 1879?

A. I was still farming and selling implements together at Fairfield.

29 X Q. To whom did you sell the first corn-planter you had like Exhibit "Evans Planter?"

A. To a man by the name of Clark.

30 X Q. Where did he live, and where does he live now?

A. He lived close to Yellow Springs. He lives some place in the West—I think in Kansas; he moved West.

31 X Q. How long did you have that planter before you sold it to Clark?

A. I don't know; I suppose some three or four weeks.

32 X Q. Who asked you to go to Evans' shops last week to get this account, Exhibit A?

A. I went on my own accord.

33 X Q. Didn't any one suggest your going to do it?

A. No, sir.

34 X Q. Who were present in the room at the time of your conversation with Mr. Evans last week?

A. I didn't know any of them. I saw one of the men several times, but did not know any of them by name.

35 X Q. When did you sell Clark his machine?

A. I think it was in 1878.

36 X Q. What time in the year?

A. Along in May.

255 37 X Q. What makes you think it was in 1878, instead of 1877 or 1879?

A. That was the year after Mr. Evans made an assignment.

38 X Q. What was the year after Mr. Evans made an assignment?
A. After he made it, in 1878. He made it in 1877, I think.
39 X Q. Had you been doing business with him before his assignment?
A. Yes, sir.
40 X Q. What did you mean in answer 17 where you say the book-keeper said he could give you everything up to the fire? Did you mean everything prior to or after the fire?
A. I understood him to say he could give me everything, and after he handed me this he said he couldn't give me anything more until Mr. Evans came—until he got the other books.
41 X Q. Did you understand the book-keeper to mean that he could give you everything before or everything after the fire?
A. I understood him to say he could give me everything until he handed me that; then he said he couldn't do any more until Mr. Evans came.
42 X Q. How many Evans machines did you sell in 1879?
A. I couldn't tell positive; some two or five; I don't just remember—somewhere along there.
43 X Q. How many did you sell in 1877?
A. I did not sell any.
44 X Q. How many in 1878?
A. One, if I remember right.

Re-examination:

45 R. Q. What enables you to fix upon the year 1878 as the year in which you first sold planters like Defendant's Exhibit "Evans Planter?"
256 A. It was the year after the assignment; that is all I have got to go by.
46 R. Q. Have you anything besides your recollection that makes you think that 1877 was the year of the assignment?
A. Yes, sir; I have a receipt of a bill that was unpaid before the assignment; that was paid to other parties—to Mr. George Spence.
47 R. Q. Who was George Spence?
A. He was the man he made an assignment to.
48 R. Q. Can you produce that receipt?
A. Yes, sir.
49 R. Q. Do so.

(Objected to as incompetent.)
The receipt is introduced and offered in evidence and marked "Complainant's Exhibit B."

"COMPLAINANT'S EXHIBIT B."

Received of S. D. Fogle eleven $\frac{50}{100}$ dollars, in full for harrow, Aug. 4, 1877.
$11.50.

GEO. SPENCE,
Assignee of Evans Mac. Co.

(Objected to as incompetent and irrelevant.)

50 R. Q. This receipt, as I understand, was the final settlement of an account that you had with the Evans Co.?

A. Yes, sir.

51 R. Q. And you commenced selling corn-planters like Exhibit "Evans Planter" in the spring next after this receipt was given?

A. Yes, sir; every year after that, except the two last years, if I remember right.

(Objected to as not re-examination.)

S. D. FOGLE.

257 *Calvin R. Phebus.*

CALVIN R. PHEBUS, a witness produced on behalf of complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by EDWARD BOYD, of counsel for the complainant, as follows:

1 Q. Are you the Calvin R. Phebus who testified in this case at Xenia on behalf of the defendant?

A. Yes, sir.

2 Q. Since so testifying have you examined the dropping mechanism of Defendant's Exhibit Buckeye Planter?

A. I have.

3 Q. State whether you made the castings for said dropping mechanism or any parts of the same; and, if so, which?

A. I made the cover plate that has the cut-off, the plate on which the dropping plate rests, and the bed plate. I know nothing about the rotary plate, the star, or the driver.

4 Q. State whether while you were with the Shawnee Agricultural Company you ever saw a drop plate driven by a star, as shown in the Exhibit Buckeye Planter.

A. I never did, sir.

5 Q. State whether any of the rotary plates before you represent those made by you for the spring trade of 1878; and, if so, which.

A. This one with the lugs on the bottom.

(Counsel here offers in evidence the plate referred to by the witness in the last answer and marks the same "Buckeye, 1878, Rotary Plate.")

(Objected to as irrelevant and not in rebuttal.)

6 Q. Look at the two drivers I now show you and state whether you recognize the same; and, if so, when they were made and for what purpose.

A. They were made while I was in Xenia, along between 1877 and 1878, and they were used for corn-planter to drive the plate with the lugs on in Complainant's Exhibit "Buckeye, 1878, Rotary Plate."

258 (Counsel for complainant offers in evidence two drivers referred to and marks the same "Complainant's Exhibits Buckeye 1878 Drivers.")

(Objected to as irrelevant and not in rebuttal.)

7 Q. Since testifying before have you reflected more fully as to whether you had made the cast-iron formers; and, if so, what is your present opinion?

(Objected to as improper and not in rebuttal.)

A. My present opinion is that there is something wrong about it, and I can't get it straightened out, somehow or another; having made so many formers, I would't like to be positive about it.

8 Q. Was anything said to you, and, if so, what and by whom, before you gave your former testimony as to the Shawnee Agricultural Company not having made any planters after you left them?

A. I would state that there was. That gentleman from Michigan—I forget his name—Schofield or Schofel—informed me that the Shawnee Agricultural Company had not made a planter since I left their employ, and also that they had found a planter with a hand lever to work in conjunction with a foot lever which was made in 1876.

9 Q. Again referring to the bed plate of the Exhibit Buckeye Planter, state whether those you made were precisely like it; or, if not, what change has been made.

A. To the best of my knowledge, this is about the same. I will not be positive about it, though.

10 Q. I call your attention to the two lugs upon the side of the bed plate and ask you whether these were on the plates cast by you?

A. I don't think they were on.

Cross-examination:

11 X Q. Had you, while with the Shawnee Company, anything to do with the setting up and putting together of corn-planters?

259 A. I had not, sir.

12 X Q. Do you know whether or not they usually carried in stock numbers of castings of different parts of their planters?

A. I do not, sir.

13 X Q. When Mr. Schofield brought with him to Dayton the Exhibit Lever Former did you not at once recognize it and tell him that you had made castings from it?

A. I state that Mr. Schofield brought the pattern over to the shop and asked me if I recognized that pattern. After looking at it a long while I thought that I had saw it at Shawnee Agricultural Works. The way I thought I recognized it — the piece around the side; but, as I said awhile ago, after thinking over this thing, I think there was something wrong about it—that is, I think I have got it mixed up with something else and can't get it straightened out, somehow.

14 X Q. What is it that you think you have it mixed up with?

A. I think I have got it mixed up with some other kind of works, somehow. I think I have made more dies than any man in town, or as many, anyhow.

15 X Q. What is the reason you think you have got it mixed up with something else?

A. Well, since looking at these corn-planters and studying the matter over I think there is something that I have got it mixed up with; some other kind of work. I can't get it straightened out in my mind, somehow.

16 X Q. You mean other formers made at the Shawnee works?

A. That I am not able to state; I can't tell.

17 X Q. In whose employ are you now?

A. No one's at present. I was out of a job since last Saturday a week.

18 X Q. Have you been promised employment by any one?

A. Yes, sir.

19 X Q. By whom?

260 A. The foreman of the pump shop at Smith & Vaile's, where I quit off, has promised me a job in three or four weeks. The foreman at Stout mills will let me know when he will want a hand, if he should happen to need one. The foreman at McSherry's will give me a job if he needs a hand; in fact, most all the foremen in town, where I have asked for a job, tell me if they need a hand they will let me know.

20 X Q. Has the Farmers' Friend Co. or its foreman promised to give you a job?

A. I think I asked him for a job. He said if he needed a hand when he starts up he would let me know. I also asked the foreman at Callahan's foundry; if he needs a hand he will let me know. I think that is all I asked. I mean by him, in this answer, the foreman of the Farmers' Friend.

CALVIN R. PHEBUS.

James W. Atkinson.

JAMES W. ATKINSON, a witness produced on behalf of complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by E. W. WITHEY, Esq., of counsel for the complainant, as follows:

1 Q. State your name, age, residence, and occupation.

A. James W. Atkinson; age, 45 years; residence, Moline, Illinois; occupation, am secretary of the Deere & Mansur Company, manufacturers of agricultural implements.

2 Q. How long have you been connected with the Deere & Mansur Co.?

A. Between 7 and 8 years.

3 Q. State whether or not a suit was commenced in the United States circuit court, in the northern district of Illinois, in equity, wherein The Farmers' Friend Manuf'g Co. was complainant and The Deere & Mansur Co. was defendant; and, if so, what was the object of the suit?

(Objected to as incompetent.)

261 A. There was such a suit commenced, and I suppose the object was to prevent our using a combined treadle and hand lever on a corn-planter.

4 Q. What patent was alleged by the complainant in that suit to be infringed by the defendants?

A. Reissue No. 10155.

5 Q. Did you have charge of the defense in that suit?

A. Yes; with our attorneys.

6 Q. Do you know Mr. A. C. Evans, of Springfield?

A. I have met him. I have no great acquaintance with him. I met him, I think it was, in the winter of 1882 and 1883, at the shops of Evans, Foos & Co. or Evans & Foos M'f'g Co., in Springfield, Ohio.

7 Q. For what object did you call upon Mr. Evans at that time?

A. To find out what they were manufacturing or had manufactured that we could use as evidence in the suit referred to.

8 Q. What did you learn?

A. I only learned that they were making a planter with a hand lever and a kind of foot treadle, such as or similar to the one shown in their patent of 1879—similar to the Defendant's Exhibit Evans Planter—and that they made it prior to the reissue No. 10155.

9 Q. Did he show you at that time or any other or say anything to you about a machine similar to Defendant's Exhibit Evans Corn Drill and Planter shown you here?

A. He did not.

10 Q. Did Mr. Evans know your object in making these inquiries?

A. I told him what my object was.

11 Q. Did you know Michael Runstetler in his lifetime?

A. I did.

12 Q. When and where?

A. In Moline, from July, 1877, up to the time of his death, in Dayton, Ohio, this last winter.

13 Q. Was he employed by the Deere & Mansur Company; if so, when?

262 A. He was employed by them from July, 1877, until some time in the spring of 1879, I think.

14 Q. Did you know of his experimenting upon a combined foot treadle and hand lever to be used upon corn-planters while in the employ of the Deere & Mansur Company? And, if so, state the nature of such experiments and the time when made.

(Objected to as incompetent.)

A. Some time before he left us—I can't tell how long—the subject of attaching such a lever to our planter in connection with a treadle was talked of. I know we went so far as to send over to an adjacent malleable iron shop and get a wagon brake or the lever of a wagon brake, as being something of the form desired, and placing it in the planter in different positions. This was talked of several times, I think, and I know he had it in his mind. I am sure he had it in his mind as something desirable to get up.

15 Q. Do you know whether he had any special feature in mind concerning the action of a treadle and hand lever which he was striving to effect; if so, what?

(Objected to as incompetent.)

A. I can't say as to that definitely, but, from the talk and from the positions the wagon brake was placed in, it was in a manner similar to the one he afterwards made after he left us.

16 Q. Do you mean the one shown in reissue 10155?

(Objected to as incompetent.)

A. Yes, sir. I think reissue No. 10155 a very natural sequence to the talks and experiments in our shops and in their direct line.

17 Q. Have you examined Defendant's Exhibit Evans Planter; if so, what do you say as to whether that is a practical working machine?

(Objected to as incompetent.)

The question is waived for the present.

18 Q. State what experience you have had in the manufacture and sale of corn-planters and their practical operation.

263 A. I have been since 1877 engaged in the manufacture and sale of corn-planters, and have been all my life familiar with their operation—ever since I was old enough to use a planter—familiar with their operation.

19 Q. Question 17 is repeated.

A. While I consider it far from the best, it has some degree of practicability.

20 Q. What do you say as to its salability on the market?

(Objected to as irrelevant.)

A. Its salability is about the same as its practicability.

21 Q. What, in your judgment, would be the practical operation of the Defendant's Exhibit Evans Corn Drill and Planter, and how would that sell upon the market?

(Objected to as incompetent and irrelevant.)

A. I don't consider it a practical machine, and don't think there could be one of them sold that would stay sold if they were guaranteed.

22 Q. I ask you the same question with reference to Defendant's Exhibit Buckeye Corn-Planter.

(Objected to as incompetent and irrelevant.)

A. The Defendant's Exhibit Buckeye Corn-Planter, while to some extent practical, I do not think it would be at all salable in the present state of corn-planter art or corn-planter trade.

23 Q. I ask you the same question with reference to Defendant's Exhibit Champion Planter?

(Objected to as incompetent and irrelevant.)

A. The Champion planter has been a practical planter, but planters or any machines must be judged of comparatively; but, not having kept pace with the improvements in corn-planters, I think its salability has been relatively injured; so much so that they have remodeled it.

24 Q. I ask you the same question with reference to the Defendant's Exhibit Wright Planter.

(Objected to as incompetent and irrelevant.)

264 A. At one time, no doubt, the Wright planter would have been considered a very good planter, but compared with the first-class planters to-day it is decidedly inferior and its salability correspondently restricted.

25 Q. I now ask you the same question with reference to Defendant's Exhibit McSherry Wright's Planter.

(Objected to as incompetent and irrelevant.)

A. I shall make the same answer as to the last question, there being but little difference between the two.

26 Q. Mr. Atkinson, how deep ought the runners of a corn-planter to sink into the ground when in actual operation planting corn?

A. It depends entirely on the soil, but the planter should be so made that its runners will admit of its runners being forced into the ground not less than five inches.

27 Q. How deep in the ground is the seed ordinarily dropped as compared with the depth to which the runners are forced?

A. In speaking of the depth of the runner in the ground, I always understand it to be the same as the depth the seed is planted, though, in fact, a part of the runner goes about an inch deeper.

28 Q. What is the minimum depth at which corn is ever properly planted?

A. There is or can be no established rule; it depends entirely on the soil and the season, and on the notion of the farmer; the best of corn-raisers differ in regard to it. In our State, or in our part of the State, the most of the corn is planted about two or two and a half inches, but the range is from one inch in a wet season to, say, five inches in such soils as parts of Kansas and Nebraska or, as I have heard it stated by dealers from that section, the deeper you can get it the better.

29 Q. To correctly represent upon a level floor a corn-planter as it is when in actual operation in the field, how should it be set up?

265 A. The wheels should be raised from the floor about $2\frac{1}{2}$ or 3 inches.

30 Q. That would represent the planter when planting corn at about what depth?

A. At about that depth, $2\frac{1}{2}$ or 3 inches.

Cross-examination:

31 X Q. I infer from what you said in your testimony that you consider it a necessary requisite of corn-planters for the present trade that they should have combined hand and foot levers; am I correct?

A. Well, I don't know whether you are or not. If you mean by that that I think it necessary, in order to sell any corn-planters at all, that they should have a combined hand and foot lever you are wrong, but if you mean that I think that in order to make corn-planters most practicable and most salable, you are correct.

32 X Q. Do you mean to the extent that planter manufacturers cannot make a success of their business as such without combined hand and foot levers?

A. Judging from the fact that all the leading planter manufacturers are adopting such a device as fast as they can or dare, I don't know which governs their action, whether a matter of caution or ability. I think I have a right to infer that they think they can make a greater success of their business by adopting such a device.

33 X Q. Aside from this inference that you draw from the actions of planter manufacturers, please answer my question.

A. I think corn-planter manufacturers cannot make their business as successful without a combined hand and foot lever as they can with one.

34 X Q. Can they make it practically successful without combined hand and foot lever?

A. They can make planters that will do very well, so long as they don't have to compete with anything better or more salable.

266 35 X Q. That does not answer my question. It is whether they can make their business practically successful without combined hand and foot levers.

A. I think I have answered it fully and as fully as I am able to do it.

36 X Q. Do you consider your company among the leading manufacturers of corn-planters?

A. I don't think there are any just now that we call any better than ours. We try to keep up with the times.

37 X Q. Does your company use combined hand and foot levers?

A. Yes, sir.

38 X Q. Was it ever enjoined from infringing the Runstetler reissue No. 10155?

A. No, sir.

39 X Q. It consented that a decree should be taken against it wherein an injunction is awarded, did it not?

(Objected to as not proper cross-examination.)

A. I think that is a private matter that no one should inquire into.

40 X Q. Leaving this for the present, your company undertook a defense of a suit brought by the Farmers' Friend Manufacturing Co. against the Wait Manufacturing Co. for alleged infringement of Runstetler patent before referred to, did it not?

A. Being, as we supposed at that time, interested in common with them in the suit we defended it with them.

41 X Q. Did you undertake to defray the entire expense in the suit against them and employ counsel for that purpose?

A. Whatever agreement we had with the Wait Company we carried out.

42 X Q. Question repeated.

(Objected to as not proper cross-examination, as irrelevant, and immaterial.)

A. Can I ask a question? If I can, then I ask my coun-
267 sel, or rather I will ask Mr. Boyd, having no counsel, whether I am expected to answer questions to matters of private business which have no connection with this case.

(Counsel for complainant replies that the question of defendant's counsel being entirely irrelevant to any issue in this case and not being cross-examination the witness is not bound to reveal anything in relation to his private business, and counsel takes the responsibility of advising him that he may decline to answer if he desires, but has no objection to his answering in any way he may see fit.)

43 X Q. Question repeated.

(Objected to as not proper cross-examination, as irrelevant, and immaterial.

A. I decline to answer.

(Defendant's counsel gives notice here that he will ask for a rule compelling the witness to answer.)

44 X Q. You come here from Moline to give your testimony voluntarily, do you not?

A. I came voluntarily.

45 X Q. What interest, if any, has your company in the Runstetler reissue?

A. We don't own the least part of it that I know of.

46 X Q. Do you individually own any interest in it?

A. Not that I am aware of.

47 X Q. By what right, then, does it use a combined hand and foot lever?

A. I decline to answer that for the same reason I did before.

48 X Q. Is it not a fact that your company, after it undertook the defense of the Wait suit, neglected to take any evidence whatever in the defense of that suit, as well as a suit against it, and that with an understanding with the complainants in this case it permitted a consent decree in Chicago to be taken?

A. I decline to answer any and all questions pertaining to those matters at this examination.

268 49 X Q. Why do you decline?

A. Because I think it is best not to answer. I think it is entirely irrelevant to this case, and that they are private business matters which no one has the right to inquire into.

(Defendant's counsel gives notice as above.)

50 X Q. Did Michael Runstetler, when he left the employ of your company, at once go into the employ of the Farmers' Friend Co.?

A. I think he left the employ of our company some time in the spring, and I don't know just what time he began in the Farmers' Friend Co. The last I think he did for our company was out on the road during the season, about the time of corn planting or during the corn-planting season, as near as I can tell now.

51 X Q. In answer to question 40 explain what you mean by saying we defended it with them.

A. I decline to answer, being in regard to matters referred to in answer 49.

52 X Q. Would it affect your business in any way to answer these questions?

A. I decline to answer that also, as it is in the same line.

(Defendant's counsel declines to cross-examine further until he can get a rule of the court either to strike out the entire deposition of this witness or compel him to answer, or in lieu thereof stand committed for contempt.)

JAMES W. ATKINSON.

Adjourned until to-morrow morning, Tuesday, Sept. 30, 1884, at 9 o'clock.

GEORGE O. WARRINGTON,
Notary Public.

TUESDAY MORNING, *Sept.* 30, 1884.

Met pursuant to adjournment, when further taking of depositions was continued.

269 *Joshua C. Norris.*

JOSHUA C. NORRIS, a witness called on behalf of complainant being first duly sworn, — in answer to interrogatories propounded to him by E. W. WITHEY, Esq.:

1 Q. State your name, age, place of residence, and occupation.

A. Joshua C. Norris; age, 43 years; residence, Dayton, O.; am a carpenter by trade.

2 Q. Do you know the John Dodds rake factory?

A. Yes, sir.

3 Q. Have you ever been employed there; and, if so, when?

A. I have been working there since 1871; I think it was the first year I started there.

4 Q. You were employed there, then, in the year 1877 and years following?

A. Yes, sir.

5 Q. Do you know of their manufacturing corn-planters for Wright & Eckert during those years, 1877 and 1878?

A. Yes, sir.

6 Q. Did you assist in any way in the manufacture of those machines?

A. Yes, sir, I did; I cut the biggest part of the wood-work in the wood department, and I helped set up some of the planters, too.

7 Q. I call your attention to the Defendant's Exhibit Wright Planter, shown you this morning, and ask you when you first saw one of those planters with a link connecting the hand lever and foot treadle?

A. Well, that is the first one I ever saw—the exhibit is; it was this morning the first time I ever saw it with a link on.

8 Q. State how the hand lever and foot treadle were connected to the front frame in the planters manufactured by Dodds for Wright & Eckert in 1877 and 1878.

270 A. Well, they were connected with three chains. There were two of them connected with the foot lever on the rear frame, and that connected with the front frame, and those levers were on the right-hand side of the seat; the third chain was connected with the hand lever.

9 Q. Were you in and about the shops of John Dodds daily, or almost daily, during those years, 1877 and 1878?

(Objected to as leading.)

A. Yes, sir; I was.

10 Q. Would or would you not have noticed whether any planters were made with the link instead of a chain attached to the hand lever?

A. Yes, sir; I undoubtedly would have noticed it.

11 Q. What time in the year 1877 did they commence manufacturing these planters?

A. I think it was in September some time.

12 Q. Were those the first that were manufactured there to your knowledge?

A. Yes, sir; they were the first.

13 Q. Do you know whether any of these planters were sent back to the factory or not by persons who purchased them?

A. Well, I don't know; a great many of them came back, but I don't know whether they had been sold or not. We took them apart and painted them over again—those which were sent back.

14 Q. How long, if you know, was the Dodds Company in disposing of those planters?

A. Well, there was about four or five years that we had planters there.

15 Q. How many of them were there?

A. There was a thousand, I believe, they contracted for; that is what we got out, a thousand.

Cross-examination by C. M. PECK, of counsel for defendants:

16 X Q. Your principal occupation was that of carpenter or wood-worker in the shop, was it not?

271 A. Yes, sir; I didn't do much carpenter work, though; I was running machinery.

17 Q. How many planters did you assist in setting up after the parts were finished?

A. Well, I couldn't tell just exactly how many I helped set up. I might have helped set up 50 or 100, or more than that; I don't know just how many; that was during the whole season; it was not just at the beginning, but during the whole season, that I helped.

18 X Q. Did you help set up any of those which were returned to be made over?

A. No; I think not; I don't think I had anything to do with them.

19 X Q. The hand levers in these planters were not made all precisely alike, were they?

A. No, sir; not exactly. They were made alike, but were not located on the machine in the same place.

20 X Q. Some of them had hooks on their lower projecting elbows for the attachment of a chain, while others didn't; is not that the case?

A. Yes, sir.

21 X Q. Did you have anything to do with the shipping of the planters?

A. No, sir; I did not.

JOSHUA C. NORRIS.

Sebastian Ritty.

SEBASTIAN RITTY, a witness produced on behalf of complainant, being first duly affirmed, in answer to interrogatories propounded to him by E. W. WITHEY, of counsel for complainant, deposeth and saith as follows:

1 Q. State your name, age, residence, and occupation.

A. Sebastian Ritty; age, 57; residence, Dayton, Ohio; I learned carriage-making as my first trade; foreman in John Dodds' agricultural shops.

272 2 Q. How long were you foreman there?

A. Over in that shop 8 years—between seven and eight—on that side of the river.

3 Q. Were you foreman there from 1877 until the works burned down?

A. Well, I was there until the 1st of August, 1884.

4 Q. Do you know the corn-planters manufactured by Dodds for Wright & Eckert in the fall of 1877 and subsequent years?

A. Yes, sir.

5 Q. How was the hand lever in machines made in the fall of 1877 and 1878 connected to the front runner frame?

A. Well, they were made with a chain.

6 Q. When were the first machines made with a hand lever connected with the front runner frame with a link, as shown in Defendant's Exhibit Wright Planter?

A. That was made in about 1880, as near as I can recollect. In spring of 1880.

7 Q. How many of those machines were made with the link?

A. Well, I couldn't state the exact number. There were levers and links made and put on old planters; the first were sent to Middletown. That is the only thing I remember about it.

8 Q. Can you give us some idea as to how many levers were made with the links? State it in round numbers.

A. I suppose there was about thirty or forty altogether.

9 Q. Were any of these links put onto new planters—that is, before they were originally sold?

A. Yes, sir.

10 Q. How many?

A. Twenty-five or thirty—somewhere along there.

11 Q. How many planters did Dodds manufacture for Wright and Eckert?

A. We made a thousand.

273 12 Q. Were any of them returned to the shop after having been sold?

A. Yes, sir.

13 Q. How long before they were all finally disposed of?

A. I think the last one sold was in the spring of 1883.

Cross-examination by C. M. PECK:

14 X Q. Didn't you tell me, Mr. Ritty, at the time your first affidavit was taken that while links were put on some of the planters you couldn't tell exactly when the first was put on, whether it was in 1878 or 1879 or 1880; that you had no means of knowing the exact time?

A. I don't remember.

15 X Q. That hasn't been many months ago, has it?

A. I don't think it has been many months.

16 X Q. Don't you recollect telling me that you suggested the use of the links in place of the chains?

A. I believe I did tell you that.

17 X Q. That is correct, isn't it?

A. Well, I believe that is.

18 X Q. Don't you also recollect telling me that you put one or two links on some of the first planters that were returned?

A. No, sir.

19 X Q. What makes you think it was in 1880 instead of 1879 when some of these links were first put on?

A. Well, the reason of that I have got a memorandum book over there where I had a shipping boss in the warehouse by the name of Young, and he commenced in the fall of 1879, up until spring of 1881, when season closed in 1881, and there were no changes made on the original planter until then—that is, about the original planter.

20 X Q. Do you mean until the time he began?

A. Not until spring of 1880. We didn't make none until the spring of 1880, when we sent them out.

274 21 X Q. Were these changes made the year before Mr. Dodds was enjoined in the suit of Wisner against him?

(Objected to as not cross-examination, because it does not appear that the witness knows anything of any such suit.)

A. These changes were made in 1880—in spring of 1880.

22 X Q. That does not answer my question. Question is repeated.

A. I haven't kept no memorandum of Mr. Dodds' being enjoined.

23 X Q. You recollect the fact that he was enjoined, don't you, and know that it was in the spring of the year? What I want to know now is whether these changes were made in the spring before Mr. Dodds was enjoined from making the Reindeer rake, which you have testified in another suit contained some of your patents.

(Objected to as not being cross-examination, because the witness has already testified that he does not recollect when Mr. Dodds was enjoined.)

A. I don't know whether it was in the spring of the year or fall that Mr. Dodds was enjoined.

24 X Q. Didn't you have charge of remodeling the Reindeer rake after that injunction?

A. Yes, sir.

25 X Q. Can't you remember what time in the year that was?

A. I think it was in 1880—in fall of 1880.

26 X Q. In whose employ are you now?

A. No one's.

27 X Q. Haven't you been engaged by the Farmers' Friend Co. to work for them when they start up?

A. There is no time set.

28 X Q. But you have been engaged by them, haven't you?

A. Yes, sir.

SEBASTIAN RITTY.

275 *V. J. Williams.*

V. J. WILLIAMS, a witness produced on behalf of complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by E. W. WITHEY, of counsel for complainant, as follows:

1 Q. State your name, age, residence, and occupation?

A. Valconlon J. Williams; age, 52 years; residence, Dubuque, Iowa; agricultural implement dealer.

2 Q. How long have you been dealing in agricultural implements?

A. Since 1860.

3 Q. State what experience you have had in selling and in watching the practical operation of corn-planters?

A. I have been selling planters for sixteen years, and most of the time as a general dealer. Of course my experience is mostly in those I have been dealing in—Vandevier, Challenge, and Farmers'

Friend and Climax. We got those in their day, and got the best, as we thought, that we found in the market. We found the rotary drop to be the most practical and most desirable.

(The testimony of this witness so far objected to as it does not appear to be in rebuttal.)

4 Q. Have you operated or watched the operation of the various kinds of corn-planters; and, if so, to what extent?

(Same objection.)

(Counsel for complainant states that these questions are merely preliminary.)

A. We found planters that we have handled that were difficult to regulate their depth—to make them deeper or shallower. We found a growing demand for some device that would regulate the depth of a planter in running deeper or shallower and raising it out of the ground in different conditions of the soil.

5 Q. What I wish to have you state now is not results, but what your experience has been in the practical operation of
276 corn-planters—that is, how much experience in their operation have you had?

A. Well, I have had 15 years' experience in handling them since 1868.

6 Q. Have you examined Defendant's Exhibit Evans Planter shown you here; and, if so, what is your opinion of it as a practical machine, and how would it sell in the market?

(Objected to as incompetent.)

A. I have had no practical experience with it, and, of course, about all I can say about that it, of course, don't strike me favorably, and don't occur to me that you can raise the runners sufficiently out of the ground or force it into the ground as readily as some other planters. I think a lever is objectionable in the center. I don't think it would sell—it wouldn't with me—as well as the Challenge or Farmers' Friend. I have had an opportunity of handling it, but prefer the Farmers' Friend or Challenge.

7 Q. I ask you the same question with reference to Defendant's Exhibit Evans Corn Drill and Planter shown you here?

(Same objection.)

A. My answer would be the same as above, so far as the drill itself is concerned.

8 Q. What is your opinion of Defendant's Exhibit Buckeye Planter as a practical machine, and how do you think that would sell in the market?

(Same objection.)

A. I think that is too complicated, and the character of its construction is such that it would not be marketable in our market. I don't regard their raising and lowering as practical at the present day.

9 Q. I ask you the same question with reference to Defendant's Exhibit Champion Planter.

A. Well, it is substantially the same as the Buckeye; some points are better, but is not practical, I think. It is hard to tell. It wouldn't sell in our market, of course. Challenge and Farmers' Friend are favorites, and Union and Deere & Mansur.

277 10 Q. I ask you the same question in reference to Defendant's Exhibit Wright Planter.

(Same objection.)

A. I would make my answer the same as the Buckeye. I don't see much difference; I don't think either of them would do in our country.

11 Q. I ask you the same question with reference to Defendant's Exhibit McSherry Wright's Planter.

(Same objection.)

A. I don't think the lever attachment is a desirable one; you can't press into the soil or raise it out of it sufficiently to meet the demand in regulating their depth. I should regard it as unsalable.

Cross-examination by C. M. PECK, counsel for defendant:

12 X Q. Have you ever tested or had any practical experience with any of the planters used as defendant's exhibits about which you have been testifying?

A. No.

VALCONLON J. WILLIAMS.

C. S. Woodrow.

C. S. WOODROW, a witness produced on behalf of complainant, in answer to interrogatories propounded to him by EDWARD BOYD, of counsel for complainant, deposeth and saith:

1 Q. State your name, age, residence, and occupation.

A. Charles S. Woodrow; age, 32; residence, Columbus, Ohio; occupation, farmer.

2 Q. What experience have you had in the sale of corn-planters?

A. I sold planters in the spring of 1877 and 1878.

3 Q. Whose planters did you sell in 1878; what was its name?

A. Buckeye planter, Shawnee Agricultural Company, at Xenia.

278 4 Q. For what season's planting were these sold?

A. For 1878.

5 Q. About how many did you sell?

A. In the neighborhood of forty—that is, to the best of my recollection. I can't be positive. I have nothing to show.

6 Q. Did these planters give satisfaction to the purchasers?

A. No, sir.

7 Q. State whether many of them were returned. If so, what was done to them?

A. There was only one returned that year.

8 Q. Look at "Complainant's Exhibit Buckeye 1878 Rotary Plate" and state how the dropper plates on the planters sold by you in 1878 compared with it.

A. It was the same.

9 Q. State whether any of those planters had a hand lever for raising or lowering the runner frame.

A. No, sir.

10 Q. If you have a cut illustrating these planters please produce it.

A. I have and produce the same.

11 Q. State how said cut was received and from whom.

A. From C. W. Trader, on letter-head, or rather on the back of it.

12 Q. In whose handwriting is said letter, if you know?

A. It is in the same handwriting that all the letters were that I received from Mr. Trader with his name signed to them. I never saw him write and could not swear positively that it is his handwriting.

13 Q. Did you receive from the Shawnee Agricultural Company the planter promised by said letter would be sent to you?

A. I did, sir.

14 Q. When did you receive it?

A. I am not positive to the exact time, but it was in the
279 fore part of January, 1879, shortly after this letter was written.

15 Q. Did that planter contain a hand lever for elevating or lowering the runner frame?

A. No, sir.

16 Q. Was there any change in its dropping mechanism from those you had sold in the spring of 1878?

A. Yes, sir.

17 Q. Describe, generally, what the difference was.

A. The points in 1878 for driving the drop plate were cast with the drop plate or attached to it by solid castings, and for 1879 there was a star which had two little lugs on it; those lugs fit into holes in the drop plate.

18 Q. How did the seeding mechanism of the planter which you received in January, 1879, compare with the seeding mechanism of Defendant's Exhibit Buckeye Planter?

A. It is just the same.

19 Q. What was the name of your business concern when the planters were sold by you?

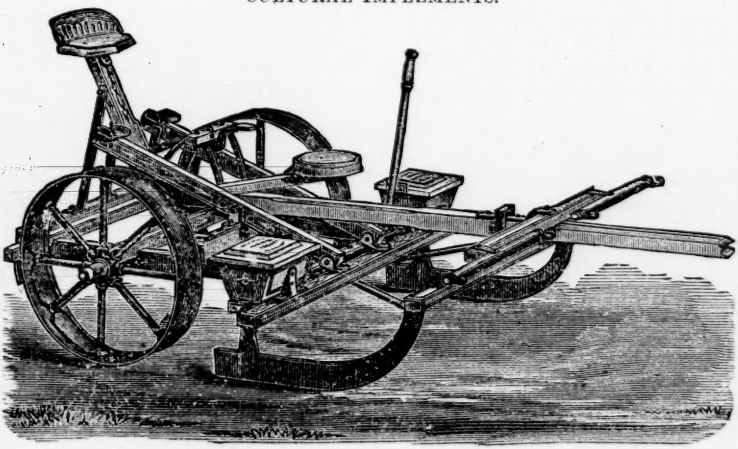
A. Patrons' Agricultural Association of Columbus, Ohio.

20 Q. How long did you continue in business and who succeeded you?

A. From the 1st of April, 1877, to March 1st, 1879; J. G. Edwards & Co. succeeded me.

(Counsel for complainant here offers in evidence the cut and letter produced by the witness and marks the same "Complainant's Exhibit Buckeye Cut.")

280 SHAWNEE AGRICULTURAL CO., MANUFACTURERS OF AGRICULTURAL IMPLEMENTS.



XENIA, O., *Dec.* 6, 1878.

C. S. Woodrow, Esq., sup't., Columbus, O.

DEAR SIR: We received your contract with letter of Mr. Lough, to be as per contract inclosed, which, if we accepted your proposition—that is, to give you a planter and drill for favors shown us last season—why to return this and you would sign a copy which you had and return to us. We accept your proposition, and in addition to the number ordered in this contract we will send you one extra, no charge. We feel satisfied that you will have no trouble this season, as we have at great expense perfected our planter and have a drill that has no equal. Please send us a copy of this signed, and oblige. Hope you will do something for us on rakes this season if possible.

C. W. TRADER, *S'y.*

21 Q. You have said that only one of the planters sold in spring of 1878 was returned, but that they did not give satisfaction.
281 You may explain why more of them were not returned.

A. Complaints came in that the corn went around on the seed plate and returned into the box instead of dropping down to the ground, as it should. I put a spring on the cut-off that was made of sheet brass that covered the holes up and kept the corn in the holes in the seed plate until it came around to the holes of the shoe to drop down to the ground, and took them out and put them on all the planters I had sold; that kept the planters out for that year. That one that was returned came home before we knew anything was the matter with it.

The entire testimony of this witness is objected to as not in rebuttal and irrelevant, and cross-examination waived.

CHARLES S. WOODROW.

Henry C. Darnell.

HENRY C. DARNELL, a witness produced on behalf of the complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by EDWARD BOYD, Esq., of counsel for the complainant, as follows:

1 Q. State your name, residence, and occupation and age.

A. Henry C. Darnell; 53 years old; am a farmer and tile-maker; live near Grove City, Franklin county, Ohio.

2 Q. State what experience you have had in the sale of corn-planters.

A. Began selling them in 1877 and quit in 1881.

3 Q. Where did you sell them in 1877 and what was the name of your firm?

A. Number 101 E. Town street, Columbus, Ohio. Name of firm was the Patrons Agricultural Association.

4 Q. How long did that association continue in business, and by what was it succeeded?

A. Two years. It was succeeded by J. G. Edwards & Co.

5 Q. Did you continue with J. G. Edwards & Co.?

282 A. I did; I was the Co.

6 Q. By whom was the planter made which you sold for the spring of 1878, and what was it called?

A. By the Shawnee Agricultural Co., of Xenia, Ohio. It was called the Buckeye corn-planter.

7 Q. Look at Complainant's Exhibit "Buckeye, 1878, Rotary Plate" and state how it compares with rotary plates on the planters sold by the association for 1878.

A. It is the same plate that was on for that year.

8 Q. State whether any of the planters for that year sold by you contained a hand lever for elevating or lowering the runner frame.

A. They had none.

9 Q. Were the planters sold by you for 1879, 1880, and 1881 made by the Shawnee Agricultural Co.?

A. They were all made by it, except one or two planters. I sold one or two Evans planters.

10 Q. What change, if any, was made in the Buckeye planter for 1879?

A. A change was made in the plate. The plate was made open and driven by an extra piece.

11 Q. Look at the seeding mechanism of Defendant's Exhibit "Buckeye Planter" and state how it compares with those sold by you for 1879.

A. Those I sold in 1879 had that feed plate and driving arrangement.

12 Q. Do you mean those sold for the spring of 1879?

A. Yes, sir.

13 Q. Was any change made in the drill attachment at that time; and, if so, what?

A. A change was made, but I don't know as I can tell what the old one was. I never sold one with the drill attachment that was a success.

14 Q. Did any of the planters which you sold for the spring
283 of 1879 contain a hand lever for raising or lowering the runner frame?

A. They did not.

15 Q. State whether any of the planters sold for 1878 were returned; and, if so, in what proportion and what, if anything, was done to them.

A. There was, I should think, nine-tenths of them sent back to the shop, and we had the plates changed from the old drop to the new.

16 Q. In sending these to the shop for this purpose were the complete machines forwarded, or only one part?

A. Only the front part was sent.

17 Q. Have you examined Defendant's Exhibit "Buckeye Planter" here shown to you?

A. Yes, sir.

18 Q. When and where did you first see a planter having a hand lever for raising the runner frame like that on the exhibit?

A. The first I saw it was in our store in the spring of 1880.

19 Q. Did you sell Buckeye planters for the spring 1880 having such a lever?

A. Part that I sold had; those that I held over from the year before didn't have.

20 Q. Did all those which you received that spring from the Shawnee Agricultural Co. have such a lever?

A. They did.

21 —. Did you receive such levers separate from planters from the Shawnee Agricultural Co. at any time; and, if so, when?

A. I did, in the spring of 1880.

22 Q. What did you do with such levers?

A. Put them on planters I had from the year before, and one, I believe, I put on a planter I had sold the year before.

23 Q. Were the planters which you sold in 1881 the same as the Buckeye with the hand lever sold the year before?

284 A. They were the same.

The testimony of the witness objected to by counsel for defendant as irrelevant and not in rebuttal and cross-examination waived.

HENRY C. DARNELL.

Adjourned until to-morrow morning, Wednesday, October 1st, 1884, at 9 o'clock a. m.

WEDNESDAY MORNING, *October 1st*, 1884.

Met pursuant to adjournment.

Victor P. Van Horne.

VICTOR P. VAN HORNE, a witness produced on behalf of complainant, being first duly sworn, in answer to interrogatories propounded to him by EDWARD BOYD, Esq., of counsel for complainant, deposeth and saith as follows:

1 Q. State your name, age, residence, and occupation.

A. Victor P. Van Horne; 33 years old; I am secretary of the Farmers' Friend Manufacturing Company; residence, Dayton, Ohio.

2 Q. For how long has your company manufactured corn-planters?

A. Since 1879; for the spring of 1879.

3 Q. Were you acquainted with Michael Runstetler during his lifetime—I mean the Michael Runstetler named in letters patent reissue 10155—and, if so, under what circumstances did you become acquainted with him?

A. I was; he was employed by us as the general superintendent. I met him first when he came here, about October 15, 1879.

4 Q. When did he enter the employ of your company and how long did he continue?

A. His time is credited since October 20, 1879. He continued in our employ until the time of his death, in February, 1884.

285 5 Q. What was the first work which he did after coming into your employ?

A. His first work was to construct a corn-planter.

6 Q. State whether he reconstructed the planter as made by you for the spring of 1879, and, if so, and if you have any model representing the planter as reconstructed by him, you will please produce the same.

A. No, sir; he at once put up a planter represented by the model herewith offered.

(Complainant's counsel offers in evidence the model produced by witness and marks the same Complainant's Exhibit Runstetler Model.)

7 Q. I observe that the model does not contain seeding mechanism; you will please state to what extent the model represents the planter made by Mr. Runstetler.

A. The model represents the planter made by him in all respects except the boxes and dropping device.

8 Q. When was this first planter completed?

A. It was not longer than two weeks from the time of his employment by us.

9 Q. When was the next planter like the first completed, and what use was made of it and when?

A. It was completed Nov. 28, 1879. It was expressed November 29th following to D. Mulholland, Ottawa, Illinois.

10 Q. What was Mr. Mulholland's business and what was the object of expressing it to him?

A. He was one of our traveling agents, and the planter was shipped him as a sample to show the dealers in that place.

11 Q. State whether Mr. Mulholland was at that time engaged in making contracts for the sale of planters for the following season.

A. He was.

12 Q. Was this planter used that fall by any one else as a sample for the making of contracts for the next season?

286 A. It was. It was shipped to Peoria, and was used for that purpose there.

13 Q. State whether contracts were made at Ottawa and Peoria for the following season.

(Objected to as irrelevant and not in rebuttal.)

A. They were.

14 Q. What style of planter did your company make and sell for the season trade of 1880?

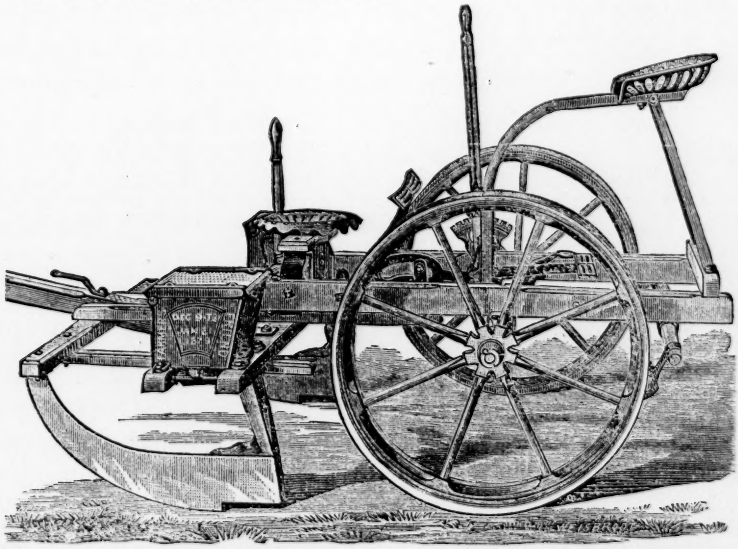
A. They were represented by the model shown, "Complainant's Exhibit Runstetler Model."

15 Q. How many planters did your company sell like the model for the year 1880?

A. Nearly thirteen hundred.

16 Q. If you have a circular containing a cut of the planter you have been speaking of you will please produce it, and state when the same was issued.

A. It is herewith offered. It was issued the latter part of December, 1879, or early in January, 1880.



Said circular is herewith offered and marked "Complainant's Exhibit Farmers' Friend Circular."

WEDNESDAY MORNING, *October 1st*, 1884.

Met pursuant to adjournment.

Victor P. Van Horne.

VICTOR P. VAN HORNE, a witness produced on behalf of complainant, being first duly sworn, in answer to interrogatories propounded to him by EDWARD BOYD, Esq., of counsel for complainant, deposeth and saith as follows:

1 Q. State your name, age, residence, and occupation.

A. Victor P. Van Horne; 33 years old; I am secretary of the Farmers' Friend Manufacturing Company; residence, Dayton, Ohio.

2 Q. For how long has your company manufactured corn-planters?

A. Since 1879; for the spring of 1879.

3 Q. Were you acquainted with Michael Runstetler during his lifetime—I mean the Michael Runstetler named in letters patent reissue 10155—and, if so, under what circumstances did you become acquainted with him?

A. I was; he was employed by us as the general superintendent. I met him first when he came here, about October 15, 1879.

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A. No, sir; he at once put up a planter represented by the model herewith offered.

(Complainant's counsel offers in evidence the model produced by witness and marks the same Complainant's Exhibit Runstetler Model.)

7 Q. I observe that the model does not contain seeding mechanism; you will please state to what extent the model represents the planter made by Mr. Runstetler.

A. The model represents the planter made by him in all respects except the boxes and dropping device.

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(Objected to as irrelevant and not in rebuttal.)

A. They were.

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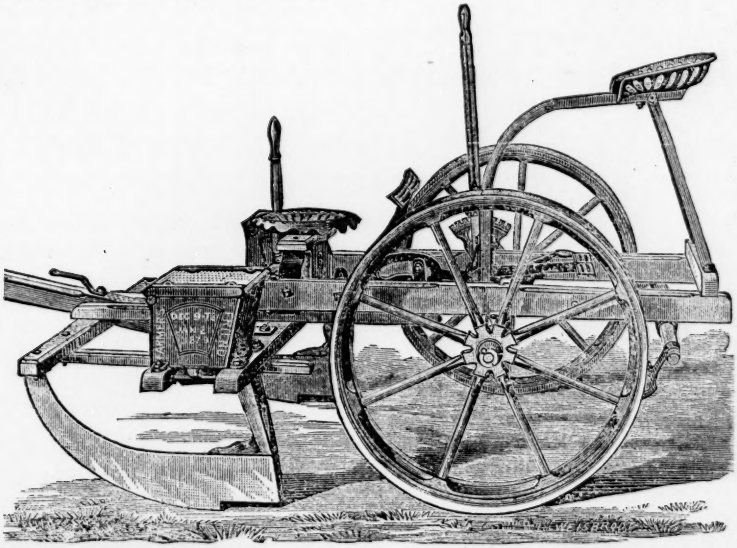

Said circular is herewith offered and marked "Complainant's Exhibit Farmers' Friend Circular."

287 THE FARMERS' FRIEND CORN-PLANTER. ITS SALE AND SUCCESS UNPRECEDENTED. FARMERS ENTHUSIASTIC IN THEIR PRAISES AND DEALERS EARNESTLY SEEKING ITS SALE. MANUFACTURED BY FARMERS' FRIEND M'F'G CO., DAYTON, OHIO. THE FARMERS' FRIEND PLANTER.

In offering our corn-planter to the trade of 1880 we point with pride to its record of last season, and have a conscious satisfaction that the improvements since made will make us the acknowledged leaders of the corn-planter trade. Its superior features have never been questioned, and the weak places that could only be developed by its first season's use in the field have been strengthened, so it is without a defect and with a combination of advantages that cannot be approached.

We ask a careful examination of the following features, which are among its special advantages:

The corn when passing into the ground is in full view of the operator.

288 The corn passes directly from the "cut-off" into the runner valve and is dropped with marvelous accuracy.

The drop cannot be made to catch, lock, or work hard; it operates the plate from near the outside; works light and has a short stroke; is positive in all its action, and is without friction and wear, and it cannot fail to work with a check-rower.

It plants and always covers in hard or soddy ground.

The runners can be held in hard ground or out of loose ground without any effort of the operator.

One runner can drop in a hollow or dead furrow or pass over an obstruction without affecting the other, and one cannot run in deeper than the other.

The runners can be locked down at any depth, making it a rigid planter.

The driver has perfect control of the planter with either a foot or hand lever; with the foot lever or treadle pressing on one end raises the runners on the other—holds them in the ground. With the hand lever the runners can be raised and also forced and held down into the ground.

It can be regulated to plant at any depth. The entire weight of the machine, driver and dropper, can be held on the runners to plant hard ground.

The boxes are made with cast-iron ends, which are bolted to the frame, rendering it impossible for any part of the drop to loosen or become out of order.

The check-rower is fastened to the frame, making it perfectly solid, with no possibility of its racking any part of the machine.

The driver's seat is on a curved standard, making it a comfortable, durable, and handsome seat.

Both the driver's and dropper's seats are adjustable, and both are on the wheel frame, so there is no weight on the horses' necks.

The runners are of an improved pattern, made from the best agricultural steel, and formed entirely by machinery, so they are free from marks and defects and have a very high polish.

A drilling attachment is added when it is desired, making for a small additional expense two machines in one.

In symmetry of proportion, in beauty of finish, and excellence of construction it has no equal.

289 *The Farmers' Friend Corn-Planter. Unequaled in Every Respect.*

It is universally conceded that no machine of any kind was ever introduced that has met with so much favor among dealers and farmers and attained so great a degree of success the first season as the Farmers' Friend Corn-Planter.

It became a favorite as soon as it was placed on exhibition, and constantly grew in popularity, and ended the season by a record in the field that has never been equaled.

We thank our patrons who kindly helped us give it a reputation, and to them, together with the new customers who are seeking it, we offer a machine that is the climax of corn-planter invention.

17 Q. By what name were these planters known?

A. The Farmers' Friend.

18 Q. If your company has made a planter without the hand lever state when it commenced and by what name it is known.

A. We made such a planter for the trade of 1881, and have made it up to the present time. It has been known as the Farmers' Friend, Jr., and as Farmers' Friend lock treadle.

19 Q. In all respects, except the hand lever, how does this machine compare, as to construction, with the Farmers' Friend?

A. It is identically the same in all other respects except the hand lever and its connections.

20 Q. State whether the treadle and locking device on this Jr. planter has been made in accordance with reissue letters patent 10155.

A. They are correctly shown in that reissue.

21 Q. State whether the same means have been employed to introduce these two styles of planters to the trade.

(Objected to as irrelevant and not in rebuttal.)

A. Both planters have been advertised in all of our regular circulars.

22 Q. State how the sales of the two classes compare and whether any inducement has been offered for the purchase of the one without the hand treadle by way of reduced price.

290 (Same objection.)

A. I cannot better answer your question than by saying that out of about 22,000 corn-planters manufactured we have made only about five hundred of the Jr. or lock treadle machine, and this notwithstanding we have offered the last-named planter at a lower price.

23 Q. If, after selling the Jr. or lock treadle planter, you have been called upon to substitute the treadle and lever of the "Farmers' Friend" state the circumstances.

(Same objection.)

A. Dealers have purchased both styles of planters, and when the "Farmers' Friend" was shown they were unable to sell the other, and were obliged to get the necessary attachments to change it. One spring we ran out of some things necessary to put up the "Farmer's Friend" planters, and, having the others in stock, shipped them out on orders for the "Farmers' Friend," with an explanation and statement that they would be changed if the purchaser wished. In most of these cases we made a further reduction in price, but still were subsequently called upon to furnish a large number of levers for these machines.

Cross-examination by C. M. PECK:

24 X Q. I understood you to say that some two weeks after Michael Runstetler entered into the employ of your company, which would be some time during the first week in November, 1879, he had completed a machine like the Complainant's Exhibit Runstetler Model. Is that correct?

A. Yes, sir.

25 X Q. Did your company at that time determine to build machines like this for the season's trade of 1880?

A. We did conclude as soon as the machine was completed, as stated.

26 X Q. Did you notify agents and dealers generally of your intention to build these machines during the fall of 1879?

A. I cannot answer that question definitely, but it is very
291 natural that in our regular business and correspondence we should have done so.

27 X Q. Does your company keep letter-press copies of your correspondence with your agents and dealers?

A. Yes, sir.

28 X Q. Do you know a Mr. P. N. Aulton or Oulton, of Granville, Illinois?

A. I have no recollection of him.

29 X Q. Will you please turn to your letter book, under date of November 24, 1879, and state whether you did not write to this gentleman, in which letter this machine is referred to and his trade solicited? If you find such letter please produce it for the examiner to take a copy of it.

A. The letter referred to is as follows:

Nov. 24, 1879.

J. A. Outen, Danville, Ill.

DEAR SIR: We have yours of the 22d inst. Will you handle our drill if satisfactory arrangements can be made on both the drill and planter? The drill we can furnish as low as any first-class machine, but no lower; but we will make a low price on the planter if

you will handle them both. Let us know about this, and how many you will order of each kind to guide us in making a discount. Mr. Runstetler, who is the originator and patentee of the Deere planter, is now with us. We have taken the best features of that machine, and the best of the Champion, and added a few improvements of our own, which puts us at the head of the planter trade. We have a foot treadle for managing the runners, and a hand lever with which we can lock them in any position and throw the whole weight of the driver and the runner frame on the runners. Either this lever or the treadle can be used, which is of the greatest advantage in working up the trade.

Yours truly, FARMERS' FRIEND M'F'G CO.,
STENOGRAPHER.

30 X Q. It is in evidence that your company sued the Deere & Mansur Company, in the northern district of Illinois, for
292 alleged infringement of the Runstetler reissue here in suit, and in which suit a decree was entered awarding an injunction, though none was issued. It is also in evidence that the Deere & Mansur Company are still manufacturing planters containing combined hand and foot levers. What is the agreement, if any, between your company and the Deere & Mansur Co. by which the latter continues the use of these levers?

A. I understand that after our suit was brought against the Deere & Mansur Co. they spent much time and research in endeavoring to find something that would be an answer, or that from the use of which they might be successful in defending the suit; that they were unable to find what in their judgment would be such, and were advised by their attorneys to make a compromise, which was effected, and they are now manufacturing their planter under a license from us.

31 X Q. Who were their attorneys?

A. Well, I can't give the names of the attorneys. I think they were Harding and Bennett.

32 X Q. What was the consideration of the giving of this license?

(Question objected to as irrelevant, immaterial, and not cross-examination, and witness is instructed that he may decline to answer.)

A. I shall merely say that the license itself was a part of the consideration, and will decline to answer the question more directly.

33 X Q. At the time of the settlement with the Deere & Mansur Company there was a suit pending against your company in the southern district of Ohio in which the Deere & Mansur Company were complainants, and wherein an injunction is asked against the alleged infringement by you of the Atkinson patent, and in which suit your company is under bond. Is not that the fact?

(Objected to as irrelevant, immaterial, and not cross-examination.)

293 A. I am unable to answer the question.

34 X Q. Don't you know the facts inquired about?

(Same objection.)

A. The only answer I can give to that question is now on the record.

35 X Q. You do know, however, that there was such a suit pending at the time of the settlement, do you not?

(Same objection.)

A. I have heard it talked about, but have had nothing to do with it personally, and know so little concerning this part of it that I shall decline definite answers to this or like questions.

Redirect examination by EDWARD BOYD:

36 R. Q. Referring to copy of letter produced in answer 39, state what interest, if any, your company had in the patent or patents under which the Champion planter was manufactured prior to November 24, 1879.

A. We have a half interest in the following patent, which is the one referred to: Reissue Jarvis Case, No. 8547, date, January 21, 1879.

37 R. Q. State, if you know, whether the manufacturers of the Champion work under a license under that patent from Mr. Case.

(Objected to as incompetent and calling for hearsay.)

A. I am quite sure they did.

38 R. Q. State whether your company became interested in the patents of the Mr. Runstetler referred to in said letter under which the Deere planter had been manufactured. If so, in what way?

A. It did. When Mr. Runstetler left the employ of the Deere & Mansur Company he was given a release without prejudice to anything he had at that time or formerly, and when he entered our employ he assigned to us all of his interest in the patents and improvements under which the Deere planter was being manufactured.

V. P. VAN HORNE.

294 *Valconlon J. Williams.*

VALCONLON J. WILLIAMS, being recalled as a witness, deposeth and saith, in answer to interrogatories propounded by E. W. WITHEY, as follows:

1 Q. How many kinds of corn-planters manufactured by the Farmers' Friend Co. do you sell?

A. Three kinds, Farmers' Friend, Farmers' Friend, Jr., and Dayton.

2 Q. What is the difference in construction in the Farmers' Friend and Farmers' Friend, Jr.?,

A. The Farmers' Friend has a ratchet lever combined with the foot treadle, while the Farmers' Friend, Jr., has no lever and the ratchet is on the treadle; it is locked with a pawl; otherwise they are similar.

3 Q. How do the two machines compare in their selling qualities?

A. The Farmers' Friend, Jr., is not salable in our trade, and while we have sold it we have had to procure the lever attachment to put on it to make it the same as the Farmers' Friend. We have always made a difference in the price of the two planters, selling the Farmers' Friend, Jr., two dollars less.

4 Q. Do I understand that persons to whom you have sold the Jr. machine have returned them to be changed to the other style?

A. In some cases; yes, sir; they have been returned, and in other cases we have sent them the attachments with instructions how to put them on, they paying us the difference in the cost.

5 Q. To how great an extent have you been required to make this change in the machines sold by you?

A. In all that we have had we have had to make that change. We have never had one that stuck.

6 Q. How, then, do you regard planters without levers as compared with planters having the lever and treadle device
295 like the Farmers' Friend machine with reference to their selling qualities?

A. The Farmers' Friend, Jr., are unsalable with us by reason of not having the lever device.

7 Q. I will again call your attention to the various defendant's exhibits concerning which I examined you yesterday, and ask you generally whether you regard them as salable machines.

(Objected to as incompetent.)

A. I do not.

8 Q. Would you, in your opinion, be able to handle any of them in your business?

(Same objection.)

A. I don't think they could be sold at any price in our market.

Cross-examination by C. M. PECK:

9 X Q. Under what name are you doing business?

A. V. J. Williams Implement Company. It is a corporation under our State law.

10 X Q. Are not the Farmers' Friend Company or its members the originators and principal stockholders in said company?

A. They were not the originators. They hold some stock in it. They were among the original incorporators. They are not the principal stockholders.

11 X Q. What office do you hold in said company?

A. I am manager; that includes the office of secretary and treasurer under our by-laws.

VALCONLON J. WILLIAMS.

Andrew Runstetler.

ANDREW RUNSTETLER, a witness produced on behalf of complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by EDWARD BOYD, of counsel for complainant, as follows:

296 1 Q. State your name, age, residence, and occupation.

A. Andrew Runstetler; 47 years; residence, Dayton, Ohio; occupation, superintendent of the Farmers' Friend Manuf'g Co.

2 Q. State what experience you have had in the manufacture and sale of corn-planters.

A. I have been in the business ever since 1863, experimenting, making improvements, etc. I have been selling planters a great deal, and have been on the road selling them a great deal.

3 Q. Was Michael Runstetler your brother?

A. He was my brother.

4 Q. Where and with whom were you both engaged in 1878 and 1879?

A. In 1878 we were both engaged with Deere & Mansur Company, in Moline, Illinois, up to the spring of 1879. Michael Runstetler, my brother, was there during the summer of 1879, but was not engaged with any firm during the summer. I continued on with Deere & Mansur Co. until following spring of 1880.

5 Q. Can you state when your brother left Deere & Mansur Company more definitely?

A. My brother left Deere & Mansur Company in March, 1879.

6 Q. Before leaving did he describe to you a plan for attaching a hand lever to a corn-planter which was being manufactured by the Deere & Mansur Company which contained a foot treadle substantially like that shown in Defendant's Exhibit Atkinson Patent?

A. He did talk to me in the fall of 1878 regarding putting a lever onto the planter which would be a great benefit to it, with regarding handling the planter.

7 Q. Do you know whether his relation with the Deere & Mansur Company at the time he left and for some time previous was
297 satisfactory or otherwise, and do you know of any reason which he had at that time for not there bringing out or putting in use improvements which he had perfected?

(Objected to as irrelevant.)

A. They were not satisfactory. He did not altogether agree with one of the partners in the concern, for the reason that he would not go ahead and make further improvements. The reason was he did not think he would stay there, for he did not think he could get along any further with the partner in the concern.

8 Q. The reason for what?

A. He did not want to stay there for the reason that they did not want to go ahead and make further improvements, and he did not want to stay there because he expected to go elsewhere to make planters.

9 Q. Have you examined and do you understand the operation of Defendant's Exhibits Evans Planter, Evans Corn Drill and Planter, Buckeye Planter, Champion Planter, Wright Planter, and McSherry's Wright Planter?

A. Yes, sir.

10 Q. Through what States have you sold planters?

A. I have sold planters in Ohio, Indiana, Illinois, Iowa, Nebraska, Kansas, Missouri, and Wisconsin.

11 Q. In addition to the exhibits to which your attention has been called are you familiar with the principal planters manufactured since you have been in the business?

A. I am.

12 Q. State whether, in your opinion, either of the exhibits to which your attention has been called would satisfy the demands of the trade, and give your reasons for such opinion as you may express.

A. I don't think any of them are successful or have been successful in the trade in my experience, for I wouldn't know where to go to sell any of them, for I don't think I would succeed in selling enough of them to pay my expenses—that is, excepting the Champion planter. In my experience they had some trade on their planter, and there is good reason for it. Parties that have made the Wright planter had money and means sufficient enough to carry on the planter business, and had the planter been a good one they would have continued. While I was selling planters on the road we never took them in consideration, for we did not consider their machines fit to go to the trade, and at the present time I honestly don't believe where other good planters are known that you could give one of them away.

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13 Q. What kind of a planter did you sell immediately before the Farmers' Friend?

A. The Deere & Mansur Company.

14 Q. Did that have a treadle without a lever?

A. Yes, sir; it had a treadle without a lever.

15 Q. You may state your experience in introducing the Farmers' Friend as to how it was received by dealers.

A. I went to the different fairs in the fall of 1880, and I traveled through Illinois and Iowa, and I met very good success with the planter on account of the advantages I had over other planters. Wherever I showed the lever and treadle combined and handled the machine I invariably made a trade, wherever I showed the machine. There were some of the other traveling men on the road in opposition to me made it their business talking against the lever and treadle combined, but it didn't last but a little while until I found they nearly all copied after us. When I met, two years ago, Mr. Shamlin, traveling for the Wait Manufacturing Co., I saw the lever on the planter. I asked him if he had it. He said it was a good thing and he said they had to have it, and he said he thought it was worth stealing, and he told me they had engaged the best attorneys they could get to break down the patent.

16 Q. With whom is Mr. Shamlin now, if you know?

A. The last time I saw him he was with the Challenge Corn-Planter Works. I saw him at the Chicago fair two weeks ago.

299 17 Q. Did Mr. Wright, the manufacturer of the Wright planter, one of which is an exhibit in the case, ever express his estimate of the hand lever? If so, when and where, and what was said?

(Objected to as incompetent and not in rebuttal.)

A. I met Mr. Wright two years ago at Indianapolis fair. I was showing up a planter to a party, a farmer friend. He stood there and listened to it and he told me that the lever on a planter was of no use. He said he put one on his planter and it was no earthly use there.

18 Q. Was Mr. Wright exhibiting a planter at the fair?

A. Not that I know of; had there been one I think I would have seen it.

19 Q. Have you sold the Farmers' Friend, Jr., or lock treadle planter?

A. Yes, sir; I have.

20 Q. How did your success in the sale of it compare with that of the "Farmers' Friend?"

A. I believe there would be about twenty Farmers' Friend to one Farmers' Friend, Jr., or lock treadle planter. The most I ever sold of the Jr. at one place, to the best of my recollection, I sold at Iowa City. I sold them some 9 or 10 Jr. planters, and when the retailing commenced he wrote me a letter to Davenport, Iowa, to send him the lever and attachments for all of them. I had several such places as those and had to change them.

21 Q. Which of those two planters sold at the higher price?

A. The Farmers' Friend, with the lever and treadle combined. I generally made it a point, when they were running on prices, that the dealer could get more money on the Farmers' Friend planter than they could on one without the lever and treadle combined.

(The entire deposition of this witness objected to as immaterial, incompetent, and not in rebuttal, and cross-examination waived.)

ANDREW RUNSTETLER.

300 Adjourned until to-morrow, Thursday morning, October 2, 1884, at 9 o'clock a. m.

THURSDAY, *October* 2, 1884.

Further taking of depositions continued.

Wilson M. Baker.

WILSON M. BAKER, a witness produced on behalf of complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by EDWARD BOYD, of counsel for complainant, as follows:

1 Q. State your name, age, residence, and occupation.

A. Wilson M. Baker; age, 37; residence, Urbana, this State; occupation, manufacturer of carriages and buggies and dealer in agricultural implements.

2 Q. If your business has included the sale of corn-planters, state for how long.

A. Well, we have been engaged in selling corn-planters since 1876, at Urbana.

3 Q. What planters have you sold?

A. Brown, Climax, Champion, Union, Farmers' Friend, Wright, Evans.

4 Q. Have you examined Defendant's Exhibit McSherry's Wright Planter, here shown to you?

A. Yes, sir.

5 Q. Is it substantially the same as those sold by you?

A. Yes, sir; that one is substantially the same as that sold by us.

6 Q. When did you sell this?

A. In 1877, I think, we sold the McSherry.

7 Q. What do you say as to the salability of such planter at the present day?

(Objected to as incompetent.)

A. Well, it wouldn't have any sale in the section of the country that I am acquainted with; certainly wouldn't be any market for it.

301 8 Q. Have you examined Defendant's Exhibit Wright Planter; and, if so, what do you say as to its salability?

(Same objection.)

A. Well, I hardly think it would sell in our country. There wouldn't be much market for it, if any; I have examined it.

9 Q. Answer a similar question as to Defendant's Exhibit Buckeye Planter.

(Same objection.)

A. I have examined it. Well, I shouldn't regard it a planter that would sell with us at prices of first-class goods.

10 Q. Have you examined Defendant's Exhibit Evans Planter, and is it substantially like the Evans planter which you have sold?

A. Yes, sir.

11 Q. State how the sale of it at the present time would compare with such planters as you are now selling.

(Same objection.)

A. Well, I would think there would be all of from seven to ten dollars difference. It would be very hard to get a sale at any price.

12 Q. Have you examined Defendant's Exhibit Evans Corn Drill and Planter; and, if so, did you ever see a planter like it before?

A. I have examined it; I never saw one like it before.

13 Q. What do you say as to the salability of a planter like it?

(Same objection.)

A. I wouldn't think it could be sold in our country.

14 Q. When did you sell the Champion planter?

A. We have had some sales and been handling some of their planters since 1878 and 1879; from that time up to 1882.

15 Q. When did you commence to sell the Farmers' Friend?
A. I think we commenced selling that planter in 1881.
16 Q. Why have you not sold the Champion since 1882?

(Objected to as irrelevant and not in rebuttal.)

302 A. Well, we have had no calls for it in our place of business—that is, substantially no calls—the demand being for the Farmers' Friend.
17 Q. State whether the Exhibit Champion Planter, here shown you, is substantially like that sold by you.
A. Yes, sir; it is substantially the same.
18 Q. State whether the devices for elevating the runners have been changed since you sold the Champion.

(Objected to as irrelevant and not rebuttal.)

A. Well, I think I noticed a change in that.
19 Q. Did the Brown, Climax, and Union planters which you sold have hand levers for operating the front frame?

(Same objection.)

A. No, sir; they hadn't levers for operating when we sold them.
20 Q. What class of planters does the trade in your section of the country demand at the present time as regards the lever devices?

(Same objection.)

A. Those that have levers—that is, levers that have the most facilities for locking and holding in the ground and convenience connection made flexible or rigid.

Cross-examination waived.

WILSON M. BAKER.

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MANUF'G CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

Examination of witnesses on behalf of the complainant, at Xenia, Ohio, October 4, 1884.

Present: E. W. Withey and Edward Boyd, for the complain-
303 ant, and C. M. Peck, for the respondent.
By request of parties it is ordered that the depositions be taken by question and answer.

Isaac B. Jones.

ISAAC B. JONES, a witness produced on behalf of the complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by EDWARD BOYD, Esq., of counsel for the complainant, as follows:

1 Question. State your name, age, residence, and occupation.

Answer. My name is Isaac B. Jones. I live in Xenia, Ohio; 62 years old. I am acting as carpenter for the Orphans' Home at this time.

2 Q. How long have you been at the Orphans' Home?

A. Well, I went there in the winter of 1880, and have been there ever since. According to their books it was January, 1880.

3 Q. Had you been in the employ of the Shawnee Agricultural Company of Xenia, Ohio; if so, during what years, and when did you leave?

A. Well, I can't tell exactly what year. They had been running about a year when they came for me to make patterns for them. I think it was about a year, for they had some patterns made before I got there. I continued to work for them until the winter of 1878 and '79; then the first summer after I left there I worked in town here in a room with Mr. Tiffany. The next fall, or rather the next winter, I went to the home.

4 Q. While you worked for the Shawnee Agricultural Company were you familiar with the different corn-planters made by it?

A. Yes sir; I think it was.

5 Q. Look at the Defendant's "Exhibit Buckeye Planter" and state whether, while you were working for the Shawnee Agricultural Company, it made any planters having a hand lever for elevating the runner frame as shown in said exhibit.

A. No; I didn't see any made there, when I was there, of that kind.

304 6 Q. Could they have been made without you seeing them?

(Objected to as incompetent.)

A. I don't know how; all of their work was done in the room where I was making my patterns. There was a time, in the summer time, while they were not running, that I was not there.

7 Q. Look at Defendant's "Exhibit Improved Buckeye Machine" and state what, if anything, you did to the model, and when and where it was.

A. The old device had a different arrangement for moving the foot treadles, and they came to me during the summer, while I was working in town—the summer of 1879—they came to me and wanted me to take the foot lever off and in its place fix the hand lever; I done it. Mr. Collier brought the models to me and I changed two of them to that device. It was my own shop, but I had it rented of Mr. McMillan.

ISAAC B. JONES.

C. W. Trader.

Also Mr. C. W. TRADER was duly sworn on behalf of the complainant, and testified as follows:

1 Q. Are you the Charles W. Trader who heretofore testified in this cause on behalf of defendant?

A. Yes, sir.

2 Q. If your company sold one of your Buckeye corn-planters to Erastus Bonner, mentioned by you in your former deposition, state the date of such sale and delivery of the same.

A. It was sold May 15, 1879; I suppose they took it the same day; I have no knowledge of that.

3 Q. Look at Complainant's "Exhibit Buckeye Cut" and state in whose handwriting the letter is.

(Objected to as irrelevant and not rebuttal.)

A. It is my handwriting.

305 Cross-examination:

1 X Q. If you have any other cut of any other form of corn-planter than that shown in the exhibit just handed you, you will please produce the same.

A. Here is one.

Defendant's counsel offers the same in evidence and has it marked "Defendant's Exhibit Colored Buckeye Cut."

2 X Q. Please state who furnished you with these cuts like "Exhibit Colored Buckeye Cut."

(The offer of the exhibit and all questions relating to it objected to as not cross-examination.)

A. J. S. Morgan & Co., of Cincinnati, O.

3 X Q. From what did J. S. Morgan & Co. make these cuts?

A. From a photograph we furnished them.

4 X Q. From what was the photograph taken?

A. Taken from a full-sized planter.

5 X Q. If you have any correspondence from J. S. Morgan & Co. relating to these cuts, you will please produce the same.

A. Here they are.

Defendant's counsel offers the same in evidence and has them marked "Defendant's Exhibits Morgan Estimate and Bill," respectively.

6 X Q. I notice that the estimate is dated July 3d, 1879. Had you furnished Morgan & Co. with a photograph of your planter at that time?

A. Yes, sir.

CHAS. W. TRADER.

John P. Beacham.

Also JOHN P. BEACHAM was presented as a witness for the complainant, and after being duly sworn testified as follows:

1 Q. Are you the John P. Beacham who heretofore testified in this cause in behalf of the defendant?

A. I am.

306 2 Q. Look at the rotary drops before you and state which of them was made by the Shawnee Agricultural Company for the next season's trade after you entered its employ, on the 21st day of December, 1877.

(Objected to as irrelevant and not rebuttal.)

A. I have not had much experience with those castings. This is the one that was made for the next season's trade after I went there. (Witness refers to the rotary plate in "Defendant's Exhibit Buckeye Planter.") I worked on this, dressing it up, when I first went there and for some time after, at different times. (Witness refers to "Complainant's Exhibit Buckeye, 1878, Rotary Plate.")

3 Q. Which of the two plates referred to was used on the planters sold for the spring planting for the spring of 1878?

A. I think they used some of both—the first mentioned, principally.

4 Q. What season of the year did you make the first hand lever, referred to in your former testimony?

A. The latter part of May or the first of June.

5 Q. Was that the May or June next following the time you commenced working for the company?

A. I can't say positive; I think, though, it was.

6 Q. Was a test made in the field of that lever?

A. There was.

7 Q. How soon after you made it?

A. I think within 3 or 4 days.

8 Q. Where was the test made?

A. At Mr. Erastus Bonner's.

9 Q. What did you next do by way of making hand levers, and when?

A. After the test they sent for me to come back and change it; about the time I could not say; but I did change it.

10 Q. Was any field test made of it after the change?

A. Not to my recollection.

11 Q. When did you make any other lever or others of the same kind?

307 A. To the best of my recollection I think about the first week in September following I made a half a dozen, more or less, I think.

12 Q. Were these half a dozen like the one as changed after the test?

A. They were, as near as I could make them.

13 Q. Were all these different levers made by hand?
A. They were.
14 Q. Did you at any time have a former for shaping them over?
A. Had no former until after those mentioned were made.

JOHN P. BEACHAM.

Erastus Bonner.

Also complainant presented ERASTUS BONNER as a witness, who, after being duly sworn, testified as follows:

1 Q. State your name, age, residence, and occupation.
A. My name is Erastus Bonner; my age is 56 years; my residence is Xenia township, about a mile and a half south of Xenia, Ohio, and at present my occupation is that of a florist.
2 Q. Did you at any time buy a Buckeye corn-planter from the Shawnee Agricultural Company of Xenia, O.?
A. Yes, sir.
3 Q. Where did that planter remain for the summer after you bought it?
A. It remained on my farm.
4 Q. Where you live now?
A. Yes, sir; and where I lived then.
5 Q. Did you ever buy any other Buckeye planter?
A. No, sir.
6 Q. Did you ever have any other corn-planter made by the Shawnee Agricultural Company on that farm?
A. No, sir.
7 Q. Did your planter have a lever for raising the front frame?
A. My recollection is that it had a foot lever.

308 Cross-examination:

1 X Q. Did you, personally, have anything to do with that planter, or have you any distinct recollection of its construction?
A. I had very little to do with it, and I have no distinct recollection of its construction.
2 X Q. Did you own or have on your farm a corn-planter before you bought that one from the Shawnee Agricultural Company?
A. I didn't own one; we occasionally hired or borrowed one before I bought that one.

ERASTUS BONNER.

Jorden Robb.

Also complainant offered Mr. JORDEN ROBB as a witness in its behalf, who, after being duly sworn, testified as follows:

1 Q. State your name, age, residence, and occupation.
A. My name is Jorden Robb; I am 32 years old; I live in Xenia, O.; I am a laborer.
2 Q. If you worked for the Shawnee Agricultural Company state when you commenced, how long you continued, and in what capacity.

A. I commenced to work there in the year 1877; about the latter part of October I went there. I worked there from that time up to the 1st of April, 1884. I was a general purpose man there. I worked at a little of everything.

3 Q. Look at the rotary drops before you and state which of them represent those made at the time you went there.

A. Well, they had been making a slide when I went there, and this is the first one I seen of the rotary. (Witness refers to Complainant's Exhibit Buckeye, 1878, Rotary Plate.)

4 Q. Which plate was used on the planter sold for the spring trade following your going there?

(Objected to as irrelevant and not rebuttal.)

A. This plate here. (Witness refers to Complainant's Exhibit Buckeye, 1878, Rotary Plate.)

309 5 Q. What kind of satisfaction did these planters give?

(Same objection.)

A. Wasn't good. They did not give good satisfaction.

6 Q. Were many of them returned and changed?

A. Yes, sir.

7 Q. What style of drill attachment was made for the year 1878?

A. They had a drill attachment that was driven by a cog, I think, about that time.

8 Q. If any change was made in the rotary drop and drill attachment sold in the spring of 1878 state what the same was.

A. Well, the old drop not giving good satisfaction they made a change. This is the change they made; this arrangement here. (Witness refers to the drop, "Defendant's Exhibit Buckeye Planter.") The drill attachment was changed; instead of a cog gearing it was changed to a chain.

9 Q. State, if you know, when and where the planter was first tested in the field after these changes were made.

A. Well, the dropping arrangement was tested out here at Galloway's; I don't know his first name.

10 Q. Was Mr. Galloway's place about ¾ths of a mile northeast of Xenia?

A. Very near that distance.

11 Q. Were you present at the trial?

A. Yes, sir.

12 Q. Who else was there?

A. Mr. Collier, Mr. Trader, and one of the agents; I don't remember his name.

13 Q. Was the agent's name Mr. Lough?

A. I think it was Lough; I could not say for certain.

14 Q. What part did you take in going to and returning from the test?

A. I put the machine together and took it apart.

15 Q. Who drove the team?

310 A. Mr. Collier drove it during the test. I am not sure but I drove the team out to the test.

16 Q. What season of the year was it?

A. Well, it was after corn-planting some time; it must have been in June or July, I guess.

17 Q. Were the apples ripe enough to be eaten at the time?

A. Yes, sir; I knocked apples and eat them at the time.

18 Q. Was this the first summer after you went there to work for the Shawnee Agricultural Company?

A. I think it was, sir.

19 Q. Was there a hand lever for elevating the runner frame on the planter tested at Galloway's?

A. I think not.

20 Q. Can you be positive as to this?

A. Well, I don't think it was on there. We did not go out there to try that; we went out there to try this. (Witness referred to the drop to Defendant's Exhibit Buckeye Planter.)

21 Q. Look at the casting that I now show you and state what it is, if you know.

A. That was put on the frame as a foot rest, I think, on the two foot levers.

22 Q. After the hand lever was adopted were these foot rests put on all planters containing the hand lever?

A. Yes, sir; I think they were.

(Counsel for complainant offered the foot rest in evidence, and — marked "Complainant's Exhibit Foot Rest.")

JORDEN ROBB.

William H. King.

Also WILLIAM H. KING was presented, on behalf of complainant, as a witness, who, after being duly sworn, testified as follows:

1 Q. State your name, age, residence, and occupation.

A. William H. King; age, 44 years; residence, Xenia, Ohio; carpenter.

311 2 Q. Where are you employed?

A. At the Soldiers' and Sailors' Orphans' Home.

3 Q. If you worked for the Shawnee Agricultural Company, state when and in what capacity.

A. I worked for the Shawnee Agricultural Company from the time of its organization up to the 25th of January, 1881. When the machinery was running I was a machine hand, and at other times putting up and packing machines for shipment.

4 Q. Were you familiar with the different changes made in the planter?

A. Yes, sir.

5 Q. Had you a knowledge at the time of the first hand lever for elevating the runner frame?

A. Yes, sir.

6 Q. Did you, with others, go to the farm of Erastus Bonner to test a planter having that lever on?

A. Yes, sir.

7 Q. Who went with you?

A. Mr. Trader and Mr. Collier.

8 Q. If at the time of the test there was another corn-planter in the field, state what kind of a planter it was and any particular circumstances that enable you to remember the fact.

A. Yes, sir; there was a Buckeye corn-planter in the field. The reason I know is because I went to the planter to get the neck-yoke, as we had forgotten to take a neck-yoke with us.

9 Q. Off what did you get the neck-yoke?

A. Off the end of the tongue of the Buckeye planter that was there in the field.

10 Q. Was the Buckeye planter which was in the field when you went there a new one?

A. Yes, sir.

11 Q. Was the one you took out to experiment with a new or old one?

A. It was one that was used at the shop to experiment on.

312 12 Q. What was done with this experimental machine after the test at Bonner's?

A. I think it was left in the shop.

13 Q. Was it there when you quit work in 1881?

A. I think it was.

14 Q. Was it ever kept in the office?

A. No; I think not.

15 Q. How soon after, or for what season after the test, were planters sold having a hand lever?

A. The fall and winter following.

16 Q. Were all these planters as shipped with a hand lever provided with foot rest like "Complainant's Exhibit Foot Rest?"

A. Yes, sir.

17 Q. Do you know for what years the company made slide drops?

A. I think in 1877; I have nothing positive, but I think it was about that time.

18 Q. What kind of a rotary drop did they make for 1878?

A. I think this is it; it had a star attached to the plate. (Witness referred to "Complainant's Exhibit Buckeye, 1878, Rotary Plate.")

19 Q. What drop was made for the year 1879?

A. This is the drop made for 1879. (Witness referred to the drop of "Defendant's Exhibit Buckeye Planter.")

20 Q. Look at "Defendant's Exhibit Lever Former," and state whether you had anything to do with making the same; if so, what.

A. Yes, sir; I helped to form it.

21 Q. When, with reference to the time of the test at Bonner's?

A. In the fall following; some time in the fall.

Cross-examination:

1 X Q. What was it you did to this Exhibit Lever Former?

313 A. I got the wood out of the rough and partly shaped it, and Mr. Collier finished it up.

2 X Q. Were you constantly at the Shawnee Agricultural Company's shops, or were there certain seasons of the year you were not there?

A. There was a month or six weeks in each year that I would not be employed there—about August.

Re-examination:

1 R. Q. Were the shops open or closed during the times you were absent?

A. Mr. Collier and Mr. Trader would be there with one hand at that time. I don't know whether you would call it closed or not.

WILLIAM H. KING.

Depositions of sundry witnesses taken before me, J. Guilford White' a notary public within and for the county of Clarke, in the State of Ohio, at Springfield, Ohio, at the law office of C. R. Bogle, on Monday, October 6, 1884, on behalf of the comlainant, in an action pending in the U. S. circuit court for the western district of Michigan, southern division — the Farmers' Friend Manufacturing Co. is plaintiff and the Challenge Corn-Planter Co. is defendant, Edward Boyd and E. E. Wood being present on behalf of complainant, and Edward Taggart on behalf of defendant.

Frank C. Riceansan.

FRANK C. RICEANSON, being by me first duly cautioned and sworn, deposes and says as follows (being interrogated by EDWARD BOYD, of counsel for complainant):

1 Question. State your name, age, occupation, and residence.

Answer. Frank C. Riceansan; Springfield, Ohio; I am thirty-three, and a machinist—a wood-worker.

2 Q. Where did you work, and for whom, in the latter part of 1876?

314 A. I worked for the Evans Machine Company, I think it was. The factory was located on the southeast corner of Main and Jackson streets, west end, Springfield, Ohio.

3 Q. How long did you work for them at that time?

A. I worked for them from the latter part of 1876 to about June, 1877.

4 Q. What did you work at?

A. When I started there I made flasks for the foundry, and then after that I worked on one-horse corn drills.

5 Q. During that time were there any two-horse corn-planters made there?

A. Not that I can remember of.

6 Q. Were there any hanging shelves in the first story of the building at that time?

A. No, sir.

7 Q. Did the building extend to the corner of Jackson street, or was there a vacant space on the corner at that time?

A. There was a vacant space, I believe, at that time.

8 Q. When did you next work for the Evans Company?

A. In December—about the 30th, I think—'78.

9 Q. Did you continue to work for them from that time on to the end of '79?

A. No, sir.

10 Q. How long did you continue to work for them?

A. I can't give the exact month or date, but at the end of the season of 1879 I went out.

11 Q. By season what do you mean?

A. What I would call the season is from the beginning of the fall till the work (the drill and harrows) was run out.

12 Q. About what time of the year would this be?

A. About March or April.

13 Q. When you went back to work on December 30, 1878, or soon after, did you see any two-horse corn-planters there?

A. Yes, sir.

315 14 Q. During your employment at that time were two-horse corn-planters returned to the shop?

A. Yes, sir.

15 Q. When had these planters been made?

(Objected to as incompetent, for the reason that the witness has not shown that he had any knowledge as to when they were made.)

A. There was one or more, I couldn't tell now, but there was one in the front room. They were made when I was gone away.

16 Q. What was done to these planters that were returned?

A. We repaired the feed on a great many of them and others were left there.

17 Q. Describe generally the lever mechanism for operating the runner frame of the planter, which was there when you returned there on Dec. 30, 1878. In doing so you may refer to the model now before you.

A. That lever on the planter was like this (witness refers to the lever on the model shown), and the frame of the machine was just like this one, excepting there was a casting on the back bar for to hold the marker. There were stirrups on the side bar. The wheels were just like these. The tongue was like this. Where this bolt is here that holds the seat bar there was a standard like the one for the foot rest for a dropper seat. The seat and the seat bar was just like this, with a catch between the seat and lever for a foot rest. The foot rest is just like that one. The cutter bars and the beam were just like this. The first machine I seen only had one wooden brace, one on each side, with a stirrup in them close to the beam, but afterwards they added an iron brace on the outside. The cutters and posts were something on the order of this model.

(Counsel for complainant here offers in evidence the model referred to, and marks the same "Complainant's Exhibit Evans Model.")

316 18. Q. How did the planters which were returned and changed or repaired, as you expressed it, compare or differ with the one that you have described as there on the 30th of Dec., 1878?

A. They were the same—the same planter.

19 Q. Were these planters also made for the season of 1879?

A. The wood-work, so far as I can remember, was the same; but I think (I am not certain about that) that there was a new feed put on and the dropper seat was changed from this seat bolt with a bar, which had two standards on the beam for the dropper seat; that is about all I know about that machine.

20 Q. Look at Defendant's Exhibit "The Evans Corn Drill and Planter," and state whether you ever saw a planter like it at the shops of the Evans Manufacturing Co.

A. I looked at the planter, and I can remember of putting a new set of wheels on a machine like that one out there, and either one or two hopper lids, I am not certain—it is either one or two. As far as I can remember that, it was a machine like that—as far as I can remember. It may be there are different changes on it, or a different machine, but I did not pay much attention to it. I can remember the seat—the driver's seat. I think that is all I did to the machine—put on them wheels and hopper lids.

21 Q. Were the machines upon which you put the wheels and hopper lids sold?

A. I suppose the machine was sold or it wouldn't have come back for repairs. I don't know anything about that. It left the shop after I put the wheels on.

22 Q. You mention different changes in the Exhibit Evans Corn Drill and Planter, and I call your attention specially to the hand lever for operating the runner frame and ask you whether you ever saw a planter at the Evans works with such a hand lever?

(Objected to as leading and incompetent and as misstating the testimony which the witness gave as to the changes.)

317 A. That one old machine. I didn't see it set up, but it had a lever; but whether it was just exactly like that one out there I can't say.

23 Q. State whether, when you returned to work in 1878, the different shelvings were the same as when you left in June, 1877.

A. There wasn't any when I came back, but I put some there. I put some pigeon holes for castings on the south side of the front room, and I put a rack, shortly after, on the west side. The posts of that rack reached from the floor to the ceiling. About seven feet from the floor up—perhaps not as high as that, I don't remember the distance—I put an extra floor or shelf, whatever you might call it, upon which there were drill handles, felloes, and spokes for wheels for two-horse corn-planters. There were also some wind engines. The vanes of the wind engines were on that rack. The castings of the wind engines were on the floor, right under that rack, and alongside of them castings was an old corn planter or drill—which one of the two I don't remember—it was one horse. Afterwards that planter was taken to the cellar, and in the southwest corner of the floor rack I had a lot of old castings. They were old feeds from machines and had been thrown there for the scrap pile, and there were a lot of single drill wheels in that same corner. In the middle rack, on the north side of the one I was speaking of, Mr. Evans had

his corn in there for his horse, and in those pigeon holes there were different castings put for the machines—the one I have described from the model.

24 Q. When you went back to work in December, 1878, was there a two-horse corn-planter on any kind of a shelf suspended from the ceiling of the first story?

A. Not that I can remember of now.

25 Q. If there had been do you think you would remember it?

A. If I had had anything to do with it I would have remembered it if it was there.

318 26 Q. Could it have been there without you seeing it?

A. If there had been anything piled over it I wouldn't have noticed it, because I hadn't anything to do with it.

27 Q. If nothing was piled over it would you have noticed it?

A. Well, I don't know but what I would. There were always some machines, corn-planters, setting in that corner, and it could have been among them and I not notice it.

28 Q. Was there a hanging shelf suspended from the ceiling at that time?

A. Only that rack I put up there.

29 Q. Did you work for the Evans Co. a third time; and, if so, when?

A. I worked for them a third time. I started to work for him in the fall of 1880—I mean Mr. A. C. Evans, who is sitting here.

30 Q. By saying you worked for Mr. A. C. Evans, do you mean that you worked for the same company, the same place that you worked before?

(Objected to as leading.)

A. Well, that is just more than I can tell, just the actual way it was, but I think there was some of the brothers went into the firm, but the date and year I cannot give. It was in the same shop, on the same ground.

31 Q. Did the planter, on which you put hopper lids and wheels, have a hand lever for throwing in and out of gear?

A. Yes, sir.

32 Q. Was the vacant lot adjoining the Evans shops afterwards occupied by James Nelson for a blacksmith shop?

A. Yes, sir.

33 Q. What corner of the streets was this lot situated on?

A. Southeast corner of Main and Jackson.

Cross-examination by EDWARD TAGGART:

34 X Q. In what part of the shops of the Evans Manufacturing Co. did you work from the time you went there in 1876 until you left there in 1877?

319 A. I worked in the wood department. The first job that I worked on was flasks. Then after the shop got to running I worked on the second floor, in the wood department, on machinery and the bench at different times. I changed about on machinery and the bench.

35 X Q. How long did you work on the flasks?

A. That is a thing I cannot tell; I don't know when they commenced running the shop, but I know about the time I commenced working there on the flasks; it was in or about October.

36 X Q. What time, as nearly as you can remember, did you commence working on the second floor on the wood-work?

A. I cannot give no time on that.

37 X Q. In what room did you work on the machinery?

A. On the second-floor back room.

38 X Q. In the fall of 1878 did not Mr. A. C. Evans have a talk with you about getting up 200 two-horse corn-planters?

A. That I don't know; he may have said it; I don't doubt at all but what he did, but I don't know.

39 X Q. How many two-horse corn-planters did the Evans Manufacturing Co. get out for the season's planting of '79?

A. I don't know as I can tell the number of them—of any that was gotten out all the time I was there.

40 X Q. What did you do from the time you went there, Dec. 30th, 1878, until the time that you left there in the spring of 1879?

A. I worked on the corn-drill, one-horse corn-drill, harrows and two-horse corn-planter, such as that model was.

41 X Q. How much wood-work did you get out, and for how many two-horse corn-planters, as near as you can remember?

A. I cannot give any number of them, because I never kept any account of them. The only way is, that I got them out in lots of ten, fifteen, and twenty-five.

320 42 X Q. On what floor did you work that year or during that season from December, 1878, to the spring of 1879?

A. On the second floor.

43 X Q. Did you not learn from Mr. Evans, in the fall of 1878, that they were to get up and manufacture and put on the market a new two-horse corn-planter differing from what they had manufactured before?

(Objected to as incompetent and not cross-examination.)

A. Different in the feed; that is all I know about the change.

44 X Q. You may describe the feed that was made before that and the change that was made in the feed.

A. The plate had little cogs on at the bottom; then there was a slide bar that had a dart on it to turn the plate. On the new one—I can't give the name, but I can describe it—on the bar—that is, the slide bar, there were two boxes (I'll call them), and in them boxes there was a little journal, and there was an oval frame around the beam plate. Now, the dropper plate had little spurs on it, and this frame that I was telling you about worked on them pivots, and on that oval frame there is a drop on each side, and in working that bar backwards and forwards these little drops would turn the plate.

45 X Q. Which was made and used first, the feed with the dart, as you call it, or the other one that you have described?

A. The feed with the dart on it.

46 X Q. When you were at work there in the spring of 1879 did you not use the feed with the dart entirely, and do you not remember of being compelled to go up and down stairs frequently to grind these darts?

A. Yes, sir.

47 X Q. Do you remember of having trouble with these dart feeds, of their catching on the points and not revolving the plates?

A. Yes, sir; I do; that is why I had to run up and down stairs so much.

321 48 X Q. Did they not change the feed and put in a different one in 1880?

A. I don't remember the year, but that feed that I last described was a new feed when I left there.

49 X Q. That is the feed with the oval arrangement?

A. Yes, sir.

50 X Q. What year was it that you put on the wheels and hopper lids to a corn-planter which you say was, as near as you can remember, like Defendant's Exhibit "The Evans Corn Drill and Planter?"

(Objected to as misquoting the testimony.)

A. I don't remember the year.

51 X Q. Was it while you were at work there, either in 1876 and 1877, or 1878 and 1879?

A. I think it was in 1878 and 1879 when Wm. Craybough, the painter, was there.

52 X Q. Was that planter to which you applied wheels and hopper lids constructed like the planter Defendant's Exhibit "The Evans Corn Drill and Planter," as near as you can remember?

A. I think it was. There may have been different castings on it or different patterns of castings. Not being set up and not paying much attention to it, I can't tell anyways whether it was just exactly the same or not.

53 X Q. From your best recollections how did the hand lever on that machine to which you applied wheels and lids correspond with the hand lever which is now on the Defendant's Exhibit "The Evans Corn Drill and Planter?"

A. I can't describe that lever; it had a spring on at the top, and, undoubtedly, worked in a ratchet below; and that is all the description I can give of it.

54 X Q. Do you remember by what means it was connected to the runner frame?

A. By bolts on the side bar, I think.

322 55 X Q. What other work were you doing in the shop about the time you put up the shelving on the lower floor that you have testified about?

A. Working on the machinery and setting up two-horse corn-planters and harrows.

56 X Q. What time of the year was it?

A. It was in the fall, I think, I put up them shelvings for castings for the spring trade.

57 X Q. Is it not possible that you put up those shelvings the first time you worked there?

A. No, sir; I may have put the pigeon holes up, but the shelving, as I said before, was put up afterwards.

58 X Q. Did you not in June, 1878, lay a floor in the basement?

A. I laid a floor in the basement just before Mr. Evans failed. Now, what year that was in I can't just exactly say; I think, though, 1877.

59 X Q. Did you not use some of the studding (2 x 4) which Mr. Evans got for the floor of the basement for supporting the shelving on the first floor, and was not the shelving put up at about the same time that the floor was laid?

A. The studding may have been of the same lot, but I am certain that I did not put up that shelving at the time I laid the floor; it was afterwards.

60 X Q. If Mr. A. C. Evans, Jonathan Evans, and Louis Evans should swear positively that there was in the shops of the Evans Manufacturing Co. from the spring of 1878 and during the years '79, '80, and 81 a corn-planter similar in every respect to the Defendant's Exhibit "The Evans Corn Drill and Planter" you would have no doubt, would you, that such a corn-planter was there?

(Objected to as improper on cross-examination.)

A. They can swear if they want to. I never seen but one corn-planter, and that is the one I put the wheels on, up to this time, that I can remember of.

The taking of these depositions adjourned until October 7th, at 9 o'clock a. m.

323 OCTOBER 7TH—9 o'clock a. m.

The taking of these depositions resumed.

61 X Q. When and where did you first see the model which is marked Complainant's Exhibit "Evans Model?"

A. I first seen the model at Dayton, at the office of the Farmers' Friend Manufacturing Co., last Saturday.

62 X Q. Who exhibited it to you at that time and place?

A. Mr. Kuhns and his superintendent. I saw this model there.

63 X Q. At whose request and for what purpose did you visit the Farmers' Friend Manufacturing Co.'s shop?

A. I was called from where I work, Mitchell and Hendley's sash and door factory, to see whether I knew anything about that machine that is setting out in the doorway (referring to Defendant's Exhibit the Evans Corn Drill and Planter). Not knowing anything about that one for certain, I was called to Dayton by the superintendent, and there I saw the corn-planter on the same principle as the model here, and the feed of the first machine, I think, was the dart—what I call the old feed—and the other one, I think, was the new feed—what I call the new feed, the one with a frame around it.

64 X Q. When you went to work for the Evans Manufacturing Co., about the 30th of Dec., 1878, did you see any full-size planters

in their shops constructed like Complainant's Exhibit the Evans Model?

A. Yes, sir.

65 X Q. In what part of the shop?

A. In the front part, where those racks were.

66 X Q. Was there more than one there at that time?

A. Not when I first went back there wasn't—in December, about the 30th, 1878. They had started to get out quite a number—the number I don't know—of this machine, and the foreman was discharged, and I took his place and finished up quite a number of the same machines as this for the spring trade of '79; but as soon
324 as they began to go out they began to come back, too, on account of the feed. For the fall of '79—that is, when they changed the feed—I think, put on the new feed. By the machines that came back I have reference to the machines made in the winter of '78 and '79. What was made before then I don't know anything about. This machine and the new feed is all that I know anything about. I wasn't there at work from, I think, the spring of '77 until '78, in December.

67 X Q. Was the corn-planter which you first saw in Mr. Evans' shop, I will say about December 30th, 1878, completed and painted?

A. It was completed, I think. It was not painted.

68 X Q. Was that the first corn-planter constructed like the model, Complainant's Exhibit Evans Model, that you ever saw?

A. Yes, sir; and it was the only two-horse planter that I know anything about that was made there.

69 X Q. In your direct examination you refer to a vacant space on the corner of Jackson and Main streets. You may state whether or not that corner was vacant when you went back the second time, in December, 1878.

A. It was not. Nelson's blacksmith shop was there. The exact time when it was put up I don't know.

Re-examination by Mr. BOYD:

70 R. Q. In your cross-examination you were asked if you remembered by what means the hand lever was connected to the runner frame in the planters on which you put hopper lids and wheels, and I now ask you whether on that planter there was a foot treadle like that shown on Exhibit "Evans Corn Drill and Planter."

A. That planter you speak about was not put together and I didn't put it together afterwards; therefore, I can't say anything about the treadle, not paying no attention to it, and that machine I
325 know nothing about. If it was made in that shop of the Evans Machine Company it was made when I was gone—while I was gone away. (By "that machine" I mean the Exhibit the Evans Corn Drill and Planter.) This (referring to the model) is the only machine I know anything about.

71 R. Q. Have you any recollection of ever seeing at the Evans Manufacturing Company's shops the latch which connects the arm of the hand lever to the foot treadle in the Exhibit "The Evans Corn Drill and Planter?"

A. I don't know anything about that machine, as I said before, only that I put on the wheels and one or two hopper lids—I don't remember which.

72 R. Q. Was there a blacksmith by the name of Washington George at the shop mentioned by you?

(Objected to as not proper cross-examination and not concerning anything brought out on the cross-examination.)

A. I always knew it as the shop of James Nelson, but I think Washington George was in with him; but at what time and year he went in and out I don't know.

73 R. Q. Has Mr. Austin C. Evans been present during the taking of your deposition yesterday and to-day?

A. He was here. I think he was here when I started.

FRANK C. RICEANSON.

Wilson Oblinger.

Also WILSON OBLINGER, being by me first duly sworn, deposes and says as follows, being interrogated by EDWARD BOYD:

1 Q. State your name, age, occupation, and residence.

A. My name is Wilson Oblinger; I am 43; a machinist; I reside in Springfield, Ohio.

2 Q. Did you ever work for the Evans Manufacturing Co.?

A. Yes, sir.

3 Q. In what years?

A. In 1881 and 1882. Before the holidays and right after.

4 Q. In what capacity?

A. Well, I was a machinist.

326 5 Q. Have you examined "Defendant's Exhibit the Evans Corn Drill and Planter?"

A. Yes, sir; I have.

6 Q. Did you ever see a drill and planter like it at the shops of the Evans Manufacturing Co.?

A. No, sir; I don't know that I ever did.

7 Q. Was there a hanging shelf suspended from the ceiling on the first floor in the Evans shop while you were there?

A. Not that I remember of.

Cross-examination by EDWARD TAGGART, Esq.:

8 X Q. How long did you work there?

A. Well, I couldn't have been there more than two months or three; I could not be positive which; I couldn't say whether it was a month before the holidays or a month afterwards; it was during the holidays. I commenced work, I think, in December.

WILSON OBLINGER.

Edmund H. Ogden.

Also EDMUND H. OGDEN, being first duly sworn, deposes and says as follows, the examination being conducted by Mr. BOYD:

1 Q. State your name, age, occupation, and residence.

A. My name is Edmund H. Ogden; age, 40; occupation, a farmer; my residence is three miles northeast of Springfield, Ohio.

2 Q. Have you a corn-planter which was made by the Evans Manufacturing Co., or parts of one?

A. I have.

3 Q. You will please produce the same.

A. I produce it here.

(Counsel for complainant here offers the planter in evidence and marks the same Complainant's Exhibit "Ogden's Evans Planter.")

4 Q. When and from whom did you purchase said planter?

327 A. I got it from Wiseman, on the corner of Main and Limestone streets, Springfield, O., in 1880, as near as I can remember.

5 Q. I observe that the dropper seat, rotary plate, and the attachment to the upper end of the bar for elevating the runners have been removed. Please state when and for what reason, if you know.

A. I didn't take any notice as to when it was done. Mr. Evans just sent a man out there with a note requesting parts of the dropper. I didn't take any particular notice of it; I simply told him where the planter was, and for him to take what parts he wanted.

6 Q. You mean Mr. Austin C. Evans, who is now present?

A. Yes, sir.

7 Q. Did he get the parts named in a previous question?

A. I presume that he got them. They were gone. The man took them.

8 Q. About how long ago?

A. In August; about the middle, I should think—last August.

9 Q. Look at Defendant's Exhibit "Evans Foot Lever" and state whether it is the foot lever which was on your planter, or similar.

A. Similar.

10 Q. Have you any knowledge of Mr. Evans testing a planter on the farm of Wm. T. Haley?

A. Yes.

11 Q. When?

A. In 1881.

12 Q. How close is Mr. Haley's farm to yours?

A. The road lays between us; the one is on one side and the other on the other; so that the road divides us.

EDMUND H. OGDEN.

328 *O. H. Anderson.*

Also O. H. ANDERSON, being by me first duly cautioned and sworn and being interrogated by EDWARD BOYD, deposes and says as follows:

1 Q. State your name, age, occupation, and residence.
A. O. H. Anderson, Springfield, Ohio; I am in the agricultural implement business at present; I am 38 years old.
2 Q. Do you know Wm. T. Haley, a farmer, of Springfield township, Ohio?
A. I know a Thomas Haley; that is all the name by which I have heard him called. He lives, I should judge, about three or four miles from here, in the neighborhood of Benson's Mills, east of town.
3 Q. How did you make his acquaintance, and when?
A. Not positively—I think, but I am not certain, I first made his acquaintance about the time I sold him a corn-planter, April 25, 1878.

It is admitted by defendant's counsel that the Thomas Haley referred to by the witness is the Wm. T. Haley who testified for the defendant.

4 Q. What was the corn-planter called?
A. The Buckeye, if I remember rightly.
5 Q. When and how did Mr. Haley pay for the planter?

(Objected to as irrelevant and immaterial.)

A. He paid cash, May 7, 1878, $30; May 14, 1878, $11. That is all in full.

O. H. ANDERSON.

329 Circuit Court of the United States for the Western District of *Washington*, S. D. In Equity.

THE FARMERS' FRIEND MANUFACTURING CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

Examination of witnesses on behalf of complainant, under the 67th rule, in equity, as amended, pursuant to the annexed notice.

Present: E. E. Wood and Edward Boyd, for the complainant, and Arthur Stem, for the respondent.
By request of parties it is ordered that the depositions be taken by question and answer.

Peter Bates.

PETER BATES, a witness produced on behalf of the complainant, being duly sworn, deposeth and saith, in answer to interrogatories propounded to him by EDWARD BOYD, Esq., of counsel for the complainant, as follows:

1 Q. State your name, age, residence, and occupation.

A. Peter Bates; age, 56; residence, Greene county, Ohio; occupation, farmer.

2 Q. Do you own a Champion corn-planter?

A. Yes, sir.

3 Q. How long have you had it?

A. Well, I am not right certain of that; I might have it five years; I think it is five years.

4 Q. Is it like the planter shown you here this morning, Defendant's Exhibit Champion Planter?

A. It is.

5 Q. You may state how, when planting in hard ground, you force the runners into the ground.

A. We have nothing to do it with; we have nothing of that kind about the planter that I can see. I don't see nothing, and that is all the fault I find with the planter.

330 6 Q. If you used any weights on the front frame for this purpose, state what.

(Objected to as leading.)

A. I set a boy on each box.

7 Q. On which boxes?

A. On the box you put the corn in.

8 Q. How many people would you then have on the planter altogether?

A. I had one to drop, and the driver who stood upon the axle-tree of the wheel, and I had a boy on each box.

Cross-examination:

9 X Q. How many boys have you got?

A. Six.

10 X Q. All farmers are not so blessed. Do you know what they do when the supply of boys is short for weighting their Champion planters?

A. Some of them may be short, and I don't know what they would do, without they put on a big stone.

11 X Q. Have you owned any other corn-planter during the last five years?

A. No, sir.

12 X Q. How much corn have you planted with the machine you have?

A. We run from thirty, forty, to fifty acres a year. Some years not so much.

13 X Q. Do you always use the boys for weights, or only when planting in hard ground?

A. Only in hard ground.

14 X Q. Had you planted corn with this planter yourself?

A. No, sir.

15 X Q. Who does your planting?

A. My boys.

16 X Q. Do you understand the operation and the way to use the latch and hook that connect the hand lever with the foot lever in this machine?

331 A. The boy tell me he does.

17 X Q. You never tried to use it yourself?

A. No, sir.

19 X Q. Do you know practically from your own experience much about corn-planters?

A. Yes, sir.

20 X Q. Is there anything in your planter to prevent the operator from forcing the runners into the ground by means of the hand lever?

A. Not that I know of; you cannot do it with that.

21 X Q. Did you ever try?

A. Yes, sir.

22 X Q. I thought you said awhile ago that you never used it?

A. I did not use it, but at the end, when the boys could not get the corn in, I tried it and could not do it.

23 X Q. Where did the driver ride on your machine?

A. When the ground is hard he stepped off onto the axle; where the ground was soft he stepped onto the seat.

24 X Q. When he stood on the axle, as you say he did in hard ground, he could not use the hand lever very conveniently for forcing the runners into the ground, could he?

A. He couldn't use it at all.

25 X Q. Did you ever try to force the runners into the ground by means of the hand lever when the hook was fixed as it now is in this model—that is, with the shoulder of the hook below the pin that goes across the slot in the foot lever?

A. No, sir.

26 X Q. Don't you think that if the driver sat in his seat and had the hook that connects the foot and hand levers arranged as it is now arranged in this model he could use the hand lever to force the runners into the ground?

A. I don't see how; you might; I won't say, I never have tried it.

27 X Q. Then you never tried to use the hand lever for forcing the runners into the ground?

332 A. No, sir.

28 X Q. Will you please look at the Champion corn-planter exhibit, which you say is like the one you own, and tell me whether or not the driver sitting in his seat could force the runners into the ground by the hand lever either with his hand or with his foot?

A. I could not state that question; that is a thing that I have never examined.

29 X Q. Didn't you get on the planter and try it?
A. Yes, sir.

Re-examination:

30 R. Q. Do you know of others using planters like yours; and, if so, how did they operate?

(Objected to as not re-examination.)

A. Well, they done tolerable. I came up to my brother's when Howard was planting corn, and he was after the planter with a hoe covering what the planter had left open—that it did not put in. I told him he should make the driver stand on the axle-tree; so he did, and he said it done better.

31 R. Q. You said something upon cross-examination that was not taken down about following your planter yourself with a hoe for the purpose of covering the grain. I ask you to state the facts.

A. Well, when the ground was a little hard I went along with a hoe behind to cover it to keep the chickens from eating it.

32 R. Q. Have you seen a new or improved Champion planter within a year?

(Same objection.)

A. Not particular; I have seen them standing in the field; I had never been close to them; I saw my boy sitting on Warner's going through the field. I now recall that I did walk one round with my boy at Warner's. He told me there was a big advantage of these machines. I did not ask him what machine it was, thinking
333 it was a Farmers' Friend machine; and he came down to my barn-yard about two weeks ago. Said I, Mr. Warner, you have a good corn-planter. Said I, You can force the runners with a lever—said I—into the ground when the ground is hard. Said I, Your machine is a Farmers' Friend. No, sir, he said; It is an improved Champion. I said, How do you know? He said it was the improved Champion.

Recross-examination:

33 R. X. Who is Howard that was riding on the planter at your brother's?

A. Howard was not riding on the planter; Howard was covering the corn.

PETER BATES.

Albert Wickersham.

ALBERT WICKERSHAM, a witness produced on behalf of complainant, being first duly sworn, deposes and says in answer to interrogatories propounded to him by EDWARD BOYD, Esq., of counsel for complainant, as follows:

1 Q. Please state your name, age, residence, and occupation.

A. Albert Wickersham; age, 41 years; residence, Jamestown, Greene county, Ohio; occupation, hardware and agricultural implement dealer.

2 Q. If you have dealt in corn-planters, state for how long and the different kinds you have sold in different years.

A. Well, I have dealt in them eight years: Buckeye, 1877, 1878, and 1879; Troy Champion, made by Beedle & Kelly, in 1880, 1881, 1882, and 1883; Evans & Foos and Farmers' Friend in 1882, 1883, and 1884.

3 Q. Were the Evans planters sold by you like the Exhibit Evans Planter now shown you?

A. No, sir.

4 Q. Was there a hand lever for elevating the front frame on any of the Buckeye planters sold by you like that on the Exhibit Buckeye Planter now shown you?

334 A. No, sir.

5 Q. In the Buckeye planter sold in 1877 was the feed a slide or rotary?

A. A slide.

6 Q. How was this in those sold in 1878?

A. Rotary.

7 Q. How did that rotary plate compare with Complainant's Exhibit Buckeye, 1878, Rotary Plate?

A. I think this is the plate or one like it.

8 Q. How near is your home to Xenia and how familiar were you with the Shawnee Agricultural Company?

A. My home is ten miles. I was very familiar with it; I was there quite often.

9 Q. Did you ever see a Buckeye planter prior to 1880 like the exhibit here shown you?

A. Never, to my knowledge.

10 Q. Have you ever worked a Champion planter in the field?

A. I have, sir.

11 Q. Were these planters like the Exhibit Champion Planter now shown you?

A. Yes, sir.

12 Q. State what your experience has been with that planter with reference to locking the same into the ground.

A. In 1881 and 1882 we had some trouble in locking it into the ground when it became worn—the crane there; I mean the piece that runs up and down. That is the piece you lock it into the ground with. When it became worn in very rough ground or crossing dead furrow it would fly out. After the latch was put on there we had no trouble. By latch I mean the little thumb piece to hold it down.

13 Q. What do you say as to the practicability or salableness of a planter constructed as the Champion was before the thumb piece was added as compared with planters having foot treadles and hand levers for operating the machine like the Farmers' Friend or Challenge?

335 (Objected to as irrelevant and immaterial.)

A. At the present time?

14 Q. Yes.

A. Well, now, that is the question. I can sell them myself for five dollars more in our territory.

15 Q. What do you say as to the salability of the Buckeye as exhibited here?

(Same objection.)

A. It would not sell at all—not in our territory; it wouldn't sell for ten dollars.

16 Q. Answer a like question as to the Wright planter here shown you.

(Same objection.)

A. I am of about the same opinion on them, too.

17 Q. What is your opinion on the same matter as to the Exhibit Evans Planter?

(Same objection.)

A. Well, I would say about ten dollars difference as compared with the present Farmers' Friend to-day. The new Evans is not so much.

18 Q. Was there a change made in the feed of the Buckeye planter which you received and sold in 1879?

A. I think there was a change from the lug to the star feed. I am very well satisfied that that is the change.

Cross-examination by ARTHUR STEM, Esq.:

19 X Q. Are you agent for or dealer in any make of corn-planters now; if so, what?

A. Yes, sir; Farmers' Friend, Evans & Foos, and Troy Champion. I am not buying any more Troy Champions, but I have one on hand, carried over from last year.

20 X Q. Do you call Complainant's Exhibit Buckeye, 1878, Rotary Plate the star or lug feed or plate?

A. I call it the lug.

21 X Q. When did you last buy a Buckeye planter?

A. In 1879, I think.

336 22 X Q. How many did you buy in that year?

A. I think it was about twenty-four.

23 X Q. What kind of feeding plates did they have?

A. I think they had the star feed.

24 X Q. Were they all alike in that respect?

A. That I can't say. They made a change, and there might have been a few with the lug plate.

25 X Q. Did you sell those twenty-four machines?

A. Yes, sir; I sold them.

26 X Q. What was the difficulty about their operation?

A. There was considerable. It didn't hang true, did not go into the ground deep enough, and didn't give very good satisfaction. Nevertheless, I sold them, as there was nothing else better around that country at that time. They had to take them or nothing. They didn't track right; the wheel didn't run square behind the

drop—that is, some of them, not all of them. I don't want to state that all were that way, but I had a good deal of complaint about them.

27 X Q. They were not like Defendant's Exhibit Buckeye Planter in all respects?

A. No; not like the one on exhibit there, in all respects.

28 X Q. Did any of them come back on your hands?

A. Yer, sir; several of them; but I put them out again the second time, and finally made them stick.

29 X Q. How deep do the farmers generally plant their corn around here?

A. Well, some of them plant 2, 2½, and 3 inches. In fact, some of them deeper than that, owing to the condition of the ground.

30 X Q. State whether or not there is any difficulty in forcing or locking the runners of the Champion planter into the ground before the hook bar or crane, as you call it, has become worn.

A. You can force it into the ground with it very well until it gets so it will knock off—get worn.

337 31 X Q. Please look at the Exhibit Champion Planter and state whether you cannot force the runners into the ground by the upright lever or hand lever by means of your foot if the lock is fastened out by a string or link such as is used on some of these other planters.

(Objected to as irrelevant and immaterial.)

A. You cannot. You can force it in, but as soon as you let go of it it flies back.

32 X Q. There is no difficulty about forcing the runners into the ground and holding them in by your foot, is there?

A. Yes, sir; there is.

33 X Q. Why can't you force them into the ground and hold them there with your foot in the Champion planter?

A. It is hard to lock any planter in the ground in hard ground, to force it into the ground with your feet, without a lock lever to keep it there.

34 X Q. Couldn't you force the runners of the Champion planter into the ground with your foot in the manner I have suggested, and then release the lock or spring which governs it and lock them in?

A. Not in all cases with your feet. It is impossible; it is impracticable in that planter, as there is no place for your feet to press it in.

35 X Q. Couldn't you push it into the ground with your feet by pushing against the upright iron lever?

A. That is not a proper place to force it in; it needs a treadle for both feet in order to push it into the ground in some cases.

36 X Q. Then it is principally a question of your being able to use two feet in particularly hard ground, is it not?

A. Yes, sir; without a lock lever.

37 X Q. That is, a lock lever on the Champion machine, is it not?

A. Yes, sir; but not in the case he stated to me, with a string around the lever.

338 38 X Q. Did you ever handle the Wright planter?

A. No, sir.

38½ X Q. You say it would not be salable on the market now to the same extent as the Farmers' Friend or Challenge; why not?

A. Well, it is not a practical planter. The planter could not be sold in the market in our part of the territory at any price, I don't think.

39 X Q. What is the difficulty or difficulties in it?

A. The first thing is, it is clumsy, hard to handle, and too much gearing about it—not simple enough.

40 X Q. You do not say that it will not plant corn, do you?

A. No, sir.

41 X Q. There have been a great many improvements in corn-planters since 1876, have there not?

A. Yes, sir.

42 X Q. What is the objection, in your opinion, to the Exhibit Evans Planter?

A. Well, there is considerable, but I don't think it is necessary for me to go into the details as an expert to show up their planter; it would take me some time to do it.

43 X Q. You said that it was not as good a planter as the Farmers' Friend; please give your reasons for saying so.

A. Well, there is a good many reasons for that planter. In the first place, in the hanging of the planter the arrangement of the levers controlling the planter in and out of the ground, and several other reasons I might give, but I don't think it is necessary.

44 X Q. I would like to know what those other reasons are?

A. There are several, and I don't think it is necessary for me to take up time to show up the planter.

45 X Q. Do you decline to give any other reasons?

A. Yes; I don't think it is necessary.

(All that part of the deposition referring to said planter is objected to unless witness submits to cross-examination.)

339 46 X Q. What do you mean by saying that there was a change made in the feed of the Buckeye planter, which you received and sold in 1879, from the lug to the star feed?

A. I mean just this, that the lug was a failure.

47 X Q. When was that change made?

A. It was on the 1879 planters.

48 X Q. Was it on all of them?

A. That I can't answer.

49 X Q. Did any of them have it in 1878?

A. Which, the star?

50 X Q. Yes, sir.

A. I think not the star *not* that I saw.

51 X Q. How many Buckeye planters did you sell in 1878?

A. I don't remember now.

52 X Q. State as nearly as you can.

A. I suppose I sold fifteen or twenty in 1878.

53 X Q. Did you have to take any of these back?

A. I answered that before. I did, and put them out again and made them stick. You could make anything stick then in the shape of a planter in our section.

54 X Q. Refer me to your answer in which you have stated the number of Buckeye machines, if any, which you had to take back in 1878, previous to the last answer.

(Objected to as improper. Witness answered the last question, and if mistaken as to having answered a similar question before the record will show it, and he should not be called up to examine in order to refer counsel to his answer.)

A. I certainly answered such a question as that. I told him I took some of them back and put them out again; so did I in 1878.

55 X. Q. You finally made all the planters sold by you in 1878 stick, did you?

A. I did.

56 X Q. Then the lug feed was not so complete a failure after all, was it?

340 A. It would catch and choke; but, as I have said before, you could make anything stick in the shape of a planter—that is, that would do fair work.

A. WICKERSHAM.

Counsel for complainant here offers in evidence an abstract of title to the property of the defendant's witness, James Nelson, on the southeast corner of Main and Jackson streets, Springfield, Ohio, under the seal and certificate of the recorder of Clarke county, Ohio, and marks the same Complainant's Exhibit Nelson Abstract.

Counsel for defendant objects to the offering of said exhibit for the following reasons: First, that it is offered here in Dayton, in the midst of the cross-examination of complainant's expert (although the notary has entered it in a different place), when it should have been offered last week, when taking testimony at Springfield, when defendant's counsel would have had an opportunity to investigate the facts to which it relates. Second, there is no witness produced to show that it relates to the same property or the same party, as alleged by complainant's counsel, upon which allegation defendant has no opportunity *to* cross-examination.

"Complainant's Exhibit Nelson Abstract" shows that the lot on the southeast corner of Main and Jackson streets, Springfield, passed by warranty deed, dated September 9, 1845, to George Dibert.

The next transfer is from George Dibert to Washington George, by deed dated November 11, 1877.

The next transfer is from Washington George to Mary O. Nelson, by deed dated February 25, 1880.

Then follow deeds of trust to which James Nelson is a party.

William B. Richards.

WILLIAM B. RICHARDS, a witness produced on behalf of complainant, being recalled, in answer to interrogatories propounded to him by E. E. WOOD, deposeth and saith:

341 1 Q. Have you been examined as an expert in this case?
A. I have.

2 Q. Please look at following letters patent offered as exhibits in this cause, to wit: Trader patent, 177,176; Schofield & Wise, 96272; Kimball patent, No. 45502; Meyers, No. 113,502, and state if you have read and examined them. If yea, please compare the devices in said patents, respectively, with the three clauses of the claim in reissue No. 10155, and state whether you find them substantially the same or different in construction, operation, and result from the invention specified in said reissue, giving your reasons for any opinion you may express.

A. I have examined the patents referred to in the question and find them to embody different construction, different combinations, and different operations from either of the claims of said reissue. The patents referred to are all horse-rakes, a different organization from the corn-planter. These rake patents all show curved teeth secured to a head which can be tilted on its journal bearings to raise and lower the free ends of the rake teeth, or the ends most distant from where they are connected to the main frame of the rake. The corn-planter is a different organization from these rakes, in that the two frames are raised at their point of union, and the three claims in the Runstetler patent referred to that construction of frame as a principal feature in the combination recited. Each of the claims recites as a principal feature therein a corn-planter of that particular construction in which is used a rear main frame mounted on supporting wheels, and a front runner frame hinged or pivoted to the main frame. The drawing shows those two frames hinged to each other as in the ordinary class of planters, and adapted to be raised at their hinged connection. Neither of these rakes show a frame hinged in any such manner; hence neither of them show the main features of the three claims of the reissue; neither does either of them show an arrangement of lever adapted to operate the two
342 frames when hinged to operate as are the two frames in the corn-planters. To adapt the levers in these rake patents to perform the functions of the levers in this reissue, a nearly entire reorganization would be required, and there is not either of these rake patents which show levers combined to perform the functions arising from the combinations recited in either clause of the reissue.

In the organization of a machine, as shown in the corn-planter in the reisue, these levers are hinged to the rear main frame and adapted to operate on the front frame, and then, to a limited extent, on the rear frame. In the Kimball horse-rake patent the foot levers are simply crank projections from the tilting rack head which carries the teeth which it elevates, and I cannot see or conceive of any

manner in which the corn-planter lever could be attached or fulcrumed to the forward frame which it elevates. In the Schofield and Wise patents the levers for raising and lowering the rake teeth are also nothing more than crank arms projecting from the tilting rake head which carries the teeth. They are not in any sense levers hinged to one frame and adapted to act on another frame. The Meyers patent is the same class. It shows the levers connected with the rake head so as to rotate it. The Trader patent shows also the levers connected with the rake head and adapted to rotate it so as to raise the teeth at their free ends. In order to have these levers operate in the horse hay-rakes, as in the corn-planter, they would be required to raise the rake head itself; or, in other words, a level adapted to operate on a corn-planter as these hay-rake levers would simply be adapted to raise and lower the tongue at its forward end. These being the facts, I must conclude that I do not find in either of the horse-rake patents the combination, the construction, or the operation forming the subject-matter of the claims in the reissue.

3 Q. Your attention is called to the Lane patent, No. 205,752.
343 State if you are familiar with that patent. If yea, how does it agree with or differ from that specified in the first of said claim in construction and operation, giving reasons.

A. The Lane patent also shows a different organization from the corn-planter. The Lane patent does not contemplate any raising of the forward frame, as is the essential feature in the corn-planter device. The Lane patent does not show the forward and rear frame of the corn-planter, nor any equivalent device; neither does it show a foot treadle and hand lever adapted to be used in conjunction or independently for the purpose of elevating or depressing any part of the device; hence the Lane patent does not show the combination recited in the first claim of the reissue, and in fact shows a very different construction from that contemplated in the language of the first claim of the reissue. I may say the same for the second and third claims of the reissue, in connection with this Lane patent, that it does not show the combination recited in said claims.

4 Q. State briefly the letter names of the levers and their connection and manner of operation required in the Lane patent to raise the plow out of the ground.

A. To raise the plow out of the ground, as shown in this patent, the operator pulls the lever A toward him, thereby presses downward on the forward end of the lever C by means of its connection to the rear curved arm of the lever H by a link, E. This arm and the release of the forward end of the plow beam from the pressure of the lever arm D, which is pulled upward by a line, *d*, in the operation of pulling the lever H towards the driver, and this operation, as stated in the specification, may be continued to elevate the plow to operate at different depths, and further continued to lift it clear from the ground. The depth of plowing is regulated principally, not by the lever C, but by the action of the arm D in pressing down the forward end of the plow beam, thereby turning the sharp forward end of the plow downward to a greater or lesser extent to make it run, respectively, deeper or shallower. It would be utterly

344 impracticable to adjust the depth of running of corn-planters in any such manner.

5 Q. In your previous examination you referred to the Kelly patent for corn-planters. I now call your attention to the full-size Kelly machine which has been offered as an exhibit in this case. How does the operation of such corn-planter agree with the operation of the patented device, and would or not your answer as to the patent also apply to the Kelly machine?

A. The hook *b* shown in the patent is on the front side of the curved arm B, and engages with a pin, *g*, in the forward end of the slot in the lever C, while in the Kelly machine the hook referred to is on the rear side of the same curved arm. Its function is the same in the patent as in the machine. The operation of the machine is the same, I think, as the operation of the patent, or so nearly exactly the same that my answers made in reference to the Kelly patent apply equally as well in reference to the Kelly machine.

6 Q. I understand that defendant's expert stated in substance that the Wright planter of 1876 contains substantially the same as the devices specified in the first two claims in the reissue of complainant, No. 10155, and that the Defendant's Exhibit Wright Planter contains the same features as those specified in said first two claims; and, in addition thereto, the invention specified in the third claim. What is your opinion as to the comparison of these two machines with said claims of the patent? Please give your reasons for same.

A. An essential feature in the corn-planter shown in reissue 10155—that is, a hand lever and foot lever which may be used in conjunction or independently for depressing the runners—is not shown in this Wright machine of 1876, and from this fact I do not find in this Wright machine of 1876 the combination made the subject of the claim in the reissue, and from the further fact that these levers are so differently arranged in the Wright machine of 1876,

345 and so differently organized from the organization arrangements of the levers in the reissue, I do not find this machine to meet this first claim of the reissue. I do not find any means shown in the Wright machine of 1876 for forcing and locking the runners into the ground, and hence I cannot understand how any person could construe this Wright machine of 1876 as meeting the second claim of the reissue, which clearly recites a hand lever and foot lever adapted to operate in that manner as a principal feature of the second claim. I might say further that there is not in this Wright machine of 1876 any foot treadle adapted for depressing the runner frame, as recited in said second claim, and, leaving out other considerations, it certainly could not be held that the combination recited in this second claim was found in the Wright machine of 1876 when neither a foot treadle adapted to depress the runner frame, nor a lock lever to lock it into the ground, nor a lock lever and hand lever adapted to be used in conjunction for forcing and locking the runners into the ground, was found in the Wright machine of 1876. I do not find in the Wright machine any hand lever adapted to be used in conjunction with or independently from a foot lever for the purpose of elevating or depressing the runners—

a feature which is prominent in the combination recited in the first claim of the reissue. This claim is not for two foot treadles for performing those functions of elevating and depressing the runners, while in the Wright machine there is one foot treadle for depressing, another for elevating, the runner frame, and both of these levers are indispensable in the operation of that machine or in the operation of depressing and elevating its runners. There is a hand lever shown in this machine which is adapted, to a very limited extent, to force the runners into the ground and to elevate them; but, from the fact of this lever not having swing enough to either raise or lower the runners sufficiently, and from the further fact that is connected to the forward frame by a loose link, which permits the forward frame to rise and fall at either or both of its sides, this hand lever is practically useless
346 in my opinion, and from the further fact of the great difference in the organization of the Wright machine from the machines shown in reissue, specially the impractical arrangement of the levers, I am of the opinion that it does not meet the first claim of the reissue or does not show the combination made the subject-matter of the first claim in said reissue. For the same reasons and for the further reason that the Wright machine does not show a machine having a foot treadle and hand lever adapted to be used in conjunction for forcing and locking the runners into the ground or lifting and locking them out of the ground, I do not find in said machine the invention claimed in the second claim; and for the same reasons and the further reason that the Wright machine does not show a hand lever rigidly connected with the foot lever, so that either hand lever or treadle may be used for forcing the runners into the ground or lifting them out of the ground, I do not find in this Wright machine the subject-matter of the invention claimed in the third claim of the reissue.

7 Q. The wheels in this Wright machine are elevated about 3 inches higher than the bottom edge of the gash cutter on the runners; when in this position will the hand lever force the runners deeper into the ground or not, and about what is the depth that the split heel is required to run in the practical operation of the machine in planting corn?

A. The hand lever in the Wright machine, on account of the stop on the forward end of the rack segment, cannot pass any farther forward than is shown in the machine as it now stands, and in that position the hand lever would not permit the runners to enter the ground deep enough for a practical planter in dry ground, dry seasons, and at such times and places as it is necessary to plant deeper; and when the hand lever is thrown backwards it will not go back far enough to raise the runners high enough above the ground for operation in the field. For instance, in turning when the wheels were in a low place, or even in any slight depression,
347 the runners would scrape sideways in the ground and interfere with the operation. The Wright machine can only be adjusted to plant at a depth a little over two inches, as the wheel will sink into the ground somewhat, and even as it now stands on the hard floor and adjusted on the blocks it cannot be said to plant

three inches in depth. A corn-planter should have capacity to plant from three to five inches in depth, and some persons in dry seasons and in dry soil want to plant deeper than five inches.

8 Q. Assuming that this Wright planter was of earlier date than the invention in complainant's patent, would you or not consider the combination of frames, hand lever, and foot lever a practical and material improvement over the Wright planter, so as to involve invention?

A. I would consider it such an advance in the art as would involve invention.

9 Q. Please compare Defendant's Exhibit Buckeye Planter with the devices specified in the first three claims of said reissue and state how they agree or differ, in your opinion.

A. One of the main features in this class of planters is the provision made within the planter whereby the runners may be forced into the ground, and the combination recited in the first claim of this reissue embraces that idea, and provides within the combination a hand and foot lever adapted to be used in conjunction, not only for the purpose of elevating the runners but also for depressing them. I do not find in this Buckeye machine any foot lever adapted to be used in conjunction with a hand lever by any action of the feet thereon in depressing the runners. In fact, this Buckeye machine is so constructed that the tongue is so connected with the rear frame and the forward frame that I would suppose that the only difficulty in the machine would be in keeping the runners out of the ground, and for that reason, as the machine is constructed, there are no means provided for depressing the runners, as the movement of the hand lever is limited and ceases at that point where it would begin to act in depressing
348 the runners. For these reasons I do not find the combinations recited in the first claim of the reissue in this Buckeye machine. I do not find in this Buckeye machine any foot lever adapted to be used in conjunction with a hand lever for forcing and locking the runners in the ground; hence I do not find the subject-matter of the second claim of the reissue in the Buckeye machine. For the same reasons, and for the further reason that the Buckeye device does not have a foot lever of the kind described, and hand lever rigidly connected with each other, as contemplated in this reissue, I do not find the subject-matter of the third claim of the reissue. The organization of this machine is so different from the corn-planter shown in the reissue, and the levers are arranged so differently, and the whole device so impractical, in my opinion, that I consider those further reasons for holding that this Buckeye machine does not contain the combinations recited in the first, second, and third claims of this reissue.

Adjourned until to-morrow, Saturday morning, Oct. 18, 1884, at 8.30 o'clock.

GEORGE O. WARRINGTON, *Notary.*

SATURDAY MORNING, *October* 18, 1884.

Met pursuant to adjournment, and the examination of WILLIAM B. RICHARDS was continued.

10 Q. State if you have examined the Evans corn drill and planter and understand its operation; if yea, state first whether you consider the same to be practically an operative device, so far as it relates to the use of the lever mechanism for raising and lowering the runner frames of the planter and holding them in the various positions required for corn-planters of the class like complainant's; second, whether you would consider that device salable and adapted to meet the wants of the trade.

A. I have very carefully examined the planter referred to in
349 the question, and while I consider that a person might plant corn with it in so far as the system of levers is considered, in raising and lowering the forward frame, it would require a good deal of skill to operate it, and if placed in the hands of persons such as ordinarily operate corn-planters would be, in my opinion, a failure practically, and that even a skillful operator would have a great deal of difficulty in operating it, principally on account of the changes that have to be made in the connections between the levers to adapt them to raise and lower the runner frame. I think the wants of the trade at this day would not be met by that machine, and for that reason that it would not be salable.

(That part of the answer referring to the wants of the trade and the market value of the machine objected to as irrelevant, and because the witness has not shown himself qualified to offer an opinion on that subject.)

11 Q. I call your attention to the Exhibit Buckeye Corn-Planter, the Wright Planter, the Beedle & Kelly Exhibit, the Barlow Patent, the Kelly Patent, the Atkinson Patent. Do you find in either of them a corn-planter which has an elevating and depressing foot lever, adapted to be operated by the feet, for elevating and depressing the runners, in combination with a hand lever, operating through the foot treadle, to lock the treadle in various positions for holding the runners into the ground?

A. I do not.

Cross-examination by ARTHUR STEM:

12 X Q. In the exhibits named in the last question do you not find in different forms and connections all the elements which are combined in the first three claims in reissue 10155?

A. I do not. It is true that I find in these exhibits a hand lever; I also find foot levers; and I also find different kinds of locking devices, but the combinations of these devices are such as set forth in the reissue, and the operation of the same devices affect each
350 other to such an extent as combined in the reissue patent that neither of the elements can be said to perform the same function as a single element in the exhibit that it does as a combined element in the reissue.

If no change arose in the function of these parts by placing them all on the same machine, and they had all been used before to perform precisely the same functions, singly and on different machines, then I would say there was no invention in combining them; but if any new results arise in the mechanical operation of the devices by their combination, then I would not say or could not say they were the same devices.

13 X Q. Would your answer be the same if I should add to the question the other exhibits offered by defendants which were omitted in the last question of direct examination—that is, the Wright planter, the Evans planters, the Trader patent, the Lane patent, the Schofield & Wise patent, the Kimball patent, the Meyers patent, and the Howe and Evans and Slosson patents?

A. I would not change the answer.

14 X Q. What, in your opinion, are the elements which are combined in the corn-planter, as set forth in the first three claims of the reissue?

A. The elements that are combined in that reissne, so far as the first claim is concerned, are in combination with the two frames of the corn-planter hinged to each other, a foot treadle, and a hand lever, adapted to be used in conjunction or independently, for the purpose of elevating or depressing the runners, as shown in the drawings. The foot lever alone may be used for those purposes, as may also the hand lever, and they may also be used in conjunction for the same purposes, and their construction, arrangement, and adaptation is such that either one of them alone, or both of them together, may be used to elevate the forward frame as high as is ever necessary to elevate it, and may be used to depress the forward frame as much as is ever required in a practical use of the machine.

351 In the second claim the elements recited are the two parts of the corn-planter hinged to each other, and a foot treadle for elevating or depressing the runner frame, in combination with a hand lock lever combined in such manner that the foot treadle and hand lever are adapted to be used in conjunction for forcing and locking the runners into the ground or lifting and locking them out of the ground, substantially as set forth in the patent.

The third claim is for a combination of the elements, the two parts of the corn-planter hinged to each other, with a foot treadle for elevating or depressing the runner frame, and a hand lever rigidly connected therewith, whereby either hand lever or treadle may be used for forcing the runners into the ground or lifting them out of the ground.

15 X Q. A corn-planter consisting of forward and rear frame hinged together and a foot lever for elevating and depressing the runners, having a hand lever rigidly attached to it for the same purpose of elevating and depressing the runners, would be covered or included by the combination described in the first claim of the patent reissue 10155, would it not?

A. It would, and the first claim has a little broader scope still, in that the hand lever and foot lever, which are not rigidly connected

with each other, and were still combined in the same manner as in the first claim, would also be included therein.

16 X Q. The hand and foot levers shown and described in the drawings and specifications are represented therein as rigidly attached to one another, are they not?

A. They are.

17 X Q. Does the foot lever described in this patent perform any particular novel function not performed by the foot lever in the Atkinson patent?

A. Yes, sir; very decided functions. When it is locked down by the hand lever shown in this reissue 10155 and locked by the hand lever in various positions it will hold the runners
352 at different depths, to regulate the depth of planting, which it will not do without the hand lock lever as shown in the Atkinson patent. Again, the foot lever, as shown in the reissue, may, on account of its combination with the hand lever, be used to a certain extent to raise and lower the forward frame without touching the foot lever—a function which it don't have in the Atkinson patent.

18 X Q. Does the foot lever, *per se*, shown in the Atkinson patent differ in any material respect from the foot lever shown in the reissue 10155?

A. There are the differences described in my last answer, unless the words *per se* are intended to apply to the foot lever in the reissue.

19 X Q. These differences arise solely from the combination with said foot lever of the hand lock lever, do they not?

A. All the differences material in the claims of the reissue do so arise.

20 X Q. Does the hand lock lever shown in reissue 10155 differ in any material respect, in construction and operation, from the hand lock lever found in the Wright planter of 1876, or the Exhibit Wright Planter, except so far as results from its combination with a foot lever?

A. The hand levers shown in the two Wright exhibits, regardless of any connection with a corn-planter, are substantially the same lever shown in the reissue, but placed as they are in those exhibits they are not the same levers, even regardless of their combination with the foot treadles, because neither of them is constructed or so arranged in reference to the other parts of the planter that it can be given swing enough to give the runner frame of the planter the proper degree of movement. For instance, in the Wright 1876 machine the hand lever will not lower the runners low enough for practical planting; it cannot be used to depress the runners at all, and in the Wright planter the hand lever alone cannot be used to raise
353 and lower the runner frame to a practical extent; but the main differences between the levers shown in these two Wright planters and the levers shown in the reissue are from their combination with the foot lever, as shown in said reissue.

21 X Q. Would a skilled mechanic familiar with the Atkinson patent and the foot lever shown therein, and also familiar with the

Wright planters and understanding the construction and operation of the hand levers, be able to attach the Atkinson foot lever to either of the Wright machines without making any more than mere mechanical changes?

A. I think it would require considerable inventive skill to adapt the Atkinson foot lever with its capacities to either of the Wright planters in such manner that the two levers could have been used in combination as recited in the claims of the reissue No. 10155.

22 X Q. If a skilled mechanic *were* familiar with the planter constructed in accordance with the Atkinson patent were shown the Wright planter of 1876, and were instructed to put the hand lever shown in the Wright planter onto the Atkinson planter, would he have any difficulty in so doing, and would he not naturally pivot the two levers together on the horizontal bar on the hand lever of Wright planter?

A. It is hard to say what every skilled mechanic might do under such circumstances, but if he did do what is assumed in the question I think he made quite an advance in the matter of levers for operating the runners of the corn-planter.

23 X Q. Are you willing to swear or state professionally, as a solicitor of patents, that you would consider the arrangement made in the manner suggested in the question involved invention or more than the mechanical skill possessed by a mechanic fairly and ordinarily familiar with the manufacture of corn-planters?

A. If I knew of the Wright planter of 1876, and also the Atkinson patent, and a person should bring to me a planter with a
354 lever like that shown in reissue 10155, I should certainly advise him that he was entitled to a patent for the new combination.

24 X Q. Advice given under such circumstances would naturally result in your employment, as solicitor, to secure a patent or make an application therefor, whereas advice to the contrary would naturally result in the abandonment of the idea of securing a patent by the party bringing the matter to you, would it not?

A. Not necessarily so. The person consulting me might merely want my opinion, while he might desire to employ or had employed some one else to prepare and prosecute his application. It might not even result in his abandonment of the idea, as that would depend on the value he attached to it and to the probability, if he thought otherwise, that he was a pretty bright fellow, and he would think I was mistaken anyhow.

25 X Q. I now repeat cross-question 23 and ask for a direct answer.

A. I think it would.

26 X Q. I now show you Defendant's Exhibit Trader Rake Lever and ask you whether it could not be applied to a corn-planter having the front and rear frames hinged together as shown in the patent reissue 10155 or in the old Wright planter of 1876 without anything more than mere mechanical changes, either of the planter or the lever, so as to produce a hand and foot lever so combined as to

be used separately or conjointly for elevating or depressing the runners?

A. The Trader rake lever, as it shows in the exhibit, could not be applied, in my opinion, to a corn-planter such as is shown in the reissue without the exercise of inventive faculties. If one should refer to the Trader patent he would probably be still farther lost, as it could not be applied to the corn-planter at all as it is in that rake. It is not a very great matter, however, after seeing this reissue patent and understanding it, and seeing corn-planters
355 embodying the same construction as shown in the reissue, then to be able to see how the Trader lever, by turning it around, placing the lever to the rear, by making journal bearings for it in the particular locations where they are shown by the reissue, and otherwise adapting it as shown in said planter and reissue, would embody the features embraced in the question; but my experience teaches me that there is a very great difference in seeing these things after they are done and after the idea is fully evolved than in conceiving the idea.

37 X Q. Would it be a very great matter for a mechanic experienced in the manufacture of corn-planters and familiar with planters constructed in accordance with the Atkinson patent, and being acquainted with the hand lock lever in the Wright planter of 1876, to produce the combination of levers shown in reissue 10155?

A. While it might not be a "very great matter" or invention, I still think it would be an invention, and if we are to estimate its greatness by its value and its value by the way our friends seem to fight for it, I should say it was considerable of a matter.

28 X Q. The patentee of reissue No. 10155 was formerly in the employ of the same company and at the same time with the patentee of the Atkinson patent, was he not?

A. They were.

29 X Q. The said Runstetler claimed to have been one of the inventors of the foot lever shown in the Atkinson patent above referred to, and the interference declared between the said Atkinson and Runstetler in the Patent Office was decided in favor of Atkinson, was it not?

(Objected to as incompetent.)

A. There was an interference declared as stated in the question, and I have been told that it was decided in favor of Atkinson. I also have been told that it is not fully determined yet.

30 X Q. Please look at the Exhibit Kimball Patent and
356 state whether you do not find there a foot lever for raising, lowering, or depressing the teeth of the rake, so combined with a hand lever, also used for the same purpose, that the foot and hand lever can be used independently or jointly for raising, lowering, or depressing the teeth.

A. There is one foot lever shown in this patent for raising the teeth, there is another foot lever shown by which the teeth may be depressed; they are both secured rigidly to the rake head, so that by

tilting them the rake head may be turned to force the teeth downward or raise them upwardly; they are attached to that part of the rake from which it is tilted or raised, and lowered where it is journaled to the thills, or first part of the device, in the operation of tilting. There is also a hand lever shown in this rake, which is very briefly described as being capable of being manipulated to assist in the operations of the foot levers. Brief as the description is of the lever J, I would infer from what is shown in the drawings and stated in the specifications that it can be used to assist the foot levers in manipulating the rake in the manner which I have described.

31 X Q. Are not the two foot levers, to which you refer, rigidly connected to one another so as to form in effect a single bent lever?

A. They would with the rake head, to which they are attached and by which they are connected as a fulcrum.

32 X Q. Then is it not a fact that in this patent you find shown a foot lever and hand lever, the two so combined that they may be used separately or jointly for lifting, lowering, or depressing the teeth?

A. The two are so united with the head of the rake to which the teeth are attached that they may be used to oscillate the rake head to raise and lower the teeth and depress them to a very slight extent.

33 X Q. It isn't necessary to depress the teeth of a rake to a very great extent, is it?

357 A. It is only necessary to depress them to a very slight extent—different from corn-planters, which require the runners depressed to such an extent as would require an arrangement and adaption of the levers entirely different from that shown in this rake patent in order to be of practical utility. If a lever was placed in a corn-planter, or connected to a corn-planter, where the forward frame is fulcrumed in order that its rear end may be elevated, it would require a lever of such length to operate it, especially to raise it, that it would be impracticable.

34 X Q. Is it not a fact that in the Schofield and Wise patent there is a foot lever so combined with a hand lever that either may be used to elevate or depress the rake teeth, or both may be used jointly for that purpose?

A. In this device, as in the Trader patent, there is not either hand or foot levers independent of the rake head to which they are attached and which they are adapted to oscillate in order to raise and lower the distal ends of teeth which project from the heads. With this qualification in each case, I may say that I find the hand and foot lever in both arranged to operate independently and connectively with the object of producing the result as I have stated.

35 X Q. Is there in reissue 10155 either a hand or a foot lever, independent of the forward frame, carrying the runners which they are intended to raise or depress?

A. Both the hand and foot levers in reissue 10155 are independent of the runners in the sense implied in my last answer—that is, they are not connected to a part which turns as their journal and forms a part of the runner frame as does turn the rake heads in

both cases, and the part which connects them and forms their journal is the part which is tilted or turned in the rakes.

36 X Q. Please look at Defendant's Exhibit Champion Planter and state whether it does not have a hand lock lever which can be used independently or with the foot lever for raising and locking the runners out of the ground.

358 A. It has a hand lever which can be used in connection with the foot lever in raising the runners to a certain height above the ground, but their construction and mode of operation in performing those functions are very different from the hand lever and foot lever shown and described in the reissue 10155. In the exhibit, in order to raise the forward frame and lock it in its elevated position, it is necessary to change the connection between the hand and foot levers at least once, an operation which is certainly impractical in planting, and the devices requiring such a change are different, in my opinion, very essentially from devices which are differently arranged, differently constructed, and operate in a different manner. In fact, to sum it up, I may say that I do not find in the exhibit a hand and foot lever adapted to act conjointly, in the sense intended in the reissue 10155, to produce the result stated in the question. In the reissue a machine is shown in which the forward frame is raised and locked by a hand and foot lever, which act simultaneously, while in the exhibit the front or runner frame is raised by a hand and foot lever, which, in the operation, or a great portion of it, cannot both be used simultaneously, and hence the one could not be used to aid the other during all of the operation, and for these reasons the mechanical functions of these parts are different in the reissue from the exhibit.

Adjourned until Monday morning, October 20, 1884, at 10 o'clock.

GEORGE O. WARRINGTON, *Notary*.

MONDAY, *October* 20, 1884.

Met pursuant to adjournment.

All that part of the last answer relating to a comparison of the exhibit referred to, with the reissue, is objected to as not responsive to the question.

37 X Q. Has not the Wright planter of 1876 a hand lever which can be used independently or with the foot levers for raising the runners and locking them out of the ground?

359 A. The Wright planter of 1876 has a hand lever which can be used to raise the runner frame to a certain extent, but, as I have before explained, I do not think that either it or the foot levers in that machine are adapted to raise the runners high enough or as high as is necessary in the practical operation. That machine does not have foot levers connected with a lock, but has separate foot levers which can be used to raise the runner frame, but the probabilities are, judging by the construction of the machine and the manner in which the front and rear frame are hinged together, that these foot levers were not intended to raise and lower the runner frame but were intended to oscillate it laterally—that is, to raise either the

one or the other runner, as the fancy of the designer of that machine might have thought necessary, as some other impracticable inventors of corn-planters have thought.

38 X Q. What is to prevent the foot levers on this machine from raising the front runner frame to any necessary or desired height?

A. The construction of the machine and the connection of the foot levers with it is such that a man with only one foot or with a lame leg could not raise it at all with the foot levers. To raise the runner frame with these foot levers would require great care, else one side of the frame would be raised more rapidly than the other, thereby tilting the forward frame to such an extent laterally as to probably throw the drop man off of his seat. These foot levers can be used to raise the forward frame higher than it can be locked by the hand lever. In the practical operation of the machine the height at which the runner frame can be locked regulates the capacity of the two parts, the hand and foot levers.

39 X Q. I must conclude, from your answer, that you have had very little practical experience in operating corn-planters, and ask you to confine your answers to the question, and again ask you if there is anything to prevent the foot levers of this machine raising the front runner frame to any desired height; if so, what?

360 A. Replying to the first part of the question, I would say that I have had, I think, as much experience in operating corn-planters as is necessary to thoroughly understand them, and, for my part, I think that your conclusion to the contrary arises possibly from your not understanding their operation yourself. I think I answered your question fully and gave my reasons for my conclusions, and I repeat that the foot levers in that Wright machine of 1876 can be used to raise the forward frame or runner frame to a greater height than it can be locked by the hand lever.

40 X Q. Can they not be used to raise the runner frame to any desired height independently and without reference to the hand lever?

A. It would be possible to do so with these foot levers, but hardly practicable, because they would be brought to such an inclination that it would hardly be practical.

41 X Q. Would it require inventive talent to lengthen or shorten the chains by which these levers are attached to the front runner frame?

A. I think not.

42 X Q. Would it require inventive talent to substitute for these chains a solid link of iron?

A. If some new function arose from its substitution it would be considered invention, I think, under our patent laws.

43 X Q. Suppose links were substituted for the chains, so that these hand and foot levers could be used to depress the runner frame, would such a change, in your opinion, evolve inventive talent?

A. I think so.

44 X Q. Would a machine so constructed be provided with a combination of hand and foot levers which could be used either inde-

pendently or conjointly for raising or lowering or depressing the runners?

A. No, sir; with a machine constructed as implied in the question the hand lever could not be used at all to depress the runners.

361 45 X Q. In my last question I intended substitution of links for chains to apply to the hand lever as well as foot lever; with that understanding please answer.

A. I don't think it could practically.

46 X Q. Would it involve invention, in your opinion, to lengthen the arc which carries the catch by which the hand lever is locked, in either this or the other Wright planter, for the purpose of giving the hand lever a longer sweep or throw?

A. I think not; unless in so doing it affected the operation of the hand lever, or of other parts in combination with it, in such manner that the combination would thereby produce some new result.

47 X Q. What do you mean by new result?

A. I mean, as I used the word in my last answer, such a change in the operation of the machine as would render it practical in some respects in which it has been a failure.

48 X Q. Please look at Defendant's Exhibit "Evans Corn Drill and Planter" and state whether the foot lever differs in any material respect—that is, in the principle and operation—from the foot lever shown in the Atkinson patent?

(Objected to as irrelevant and immaterial.)

A. The foot lever in the exhibit referred to could not be used at all on the Farmers' Friend Co.'s planter without change in its construction.

49 X Q. My question contained no reference to the Farmers' Friend Planter. Please read the question again and let him answer.

A. I would simply add to my answer the words, which is a planter very much like that shown in the Atkinson patent.

50 X Q. Is not the foot lever in the Evans corn drill and planter in principle of operation and construction substantially the same as the foot lever shown in the Atkinson patent?

(Objected to as irrelevant, immaterial, and not competent.)

362 A. As I stated before, it could not be used at all on a planter such as shown in the Atkinson patent; it can be used in the exhibit for raising and lowering the forward frame and depressing it.

51 X Q. Are not the two levers constructed and operated on substantially the same principle?

(Objected to as irrelevant and incompetent.)

A. They are not constructed on the same principle; they are operated on substantially the same principles, without reference to any other parts to which they are connected.

52 X Q. What is the difference in the principle of construction?

(Objected to as irrelevant and incompetent.)

A. The principal difference in their construction is that the Atkinson lever has its forward end carried upward and rearward to bring the foot plates convenient to the driver.

53 X Q. The sole object of that difference in construction is to bring the foot plates within reach of the driver's feet, is it not?

(Objection repeated.)

A. That is all the object in it, I believe.

54 X Q. The foot lever in this Exhibit Evans Corn Drill and Planter is adapted to be used to raise or lower or depress the runners independent of the hand lever, is it not?

A. No, sir; the relation between it and the hand lever is such that in order to raise and lower and depress the runner frame with the foot lever the link which connects the hand lever and foot lever must be connected and disconnected with the foot lever—I mean to raise and lower and depress to a practical extent, as is necessary in the operation of the machine in the field.

55 X Q. Suppose that the link or hook latch was made to swing loose, so that it could be attached to the foot lever or detached at will, would such a change require invention?

(Objected to as irrelevant and immaterial.)

A. If I understand the question, it is attached that way now.

56 X Q. I mean so arranged that it might be swung away
363 from the foot lever during the operation of the foot lever; would such a change involve invention or could any skilled mechanic make it?

A. I don't see any invention at present, because I do not see any result accomplished by such a change.

57 X Q. What do you understand to be the meaning of the word invention?

A. I understand invention in mechanics to be a new device adapted to be used for a new and useful purpose, or to be a combination of old devices brought together so as to coact to produce some new and useful result, or to be a combination of an old device or devices with some new device not known before, or devices for the same purpose.

58 X Q. Suppose the old devices brought together perform no new function, but, by acting together, produce a new result which none of them could alone produce, would such a combination involve invention?

A. If I understand the question, it involves an absurdity; the idea that bring them together to perform no new function, and stlll that they coact to produce a new result, is out of any mechanical operation or construction that I have any knowledge. I would further add to my answer as to what I considered invention that invention may arise by taking a part away from some former construction.

59 X Q. Then I understand from your last answer that all devices brought together in mechanics and which together produce a result

which neither could produce alone necessarily involves invention, although these devices perform no new function; is that correct?

A. I suppose you mean by the last clause of your question that the devices performed no new result separately, and with that understanding I would say that it is invention, in my opinion, where old devices are brought together in some new relation to each other, so that a new or useful result is produced.

364 60 X Q. I do not understand that the devices perform results either independently or in combination, but I ask you whether old devices brought together and in their new relation perform no new function, but by acting together in the same machine produce a result which neither of them produces alone, would constitute invention?

A. It would, in my opinion.

Redirect examination by EDWARD BOYD, Esq.:

61 R. Q. Referring to Defendant's Exhibit "Evans Corn-Drill and Planter," is the foot treadle about which you have been examined made of cast iron or malleable iron?

A. It is, in my opinion, malleable iron.

W. B. RICHARDS.

Directions for operating the Wright planter, taken from the exhibit. (See defendant's record, pages 94–'5.)

Operating.

The dropper will set with both feet in front of seat facing his work, taking the heel of the runner for the dropping point. Hold the lever firmly and make a quick and decided movement on approaching the check mark. Sit so that your weight will be equally balanced on both runners.

Before changing seed plates empty the hoppers of seed. In replacing valve plate fasten it securely by turning the handle of cam down.

To regulate depth lengthen or shorten the chain attached to lever hook.

To prevent driver's seat from tilting too far back shorten the chain hooked to the axle. By the use of the treadles the driver can raise either runner independent of the other or both in passing obstructions or in turning about. The driver by transferring

365 his weight to the foot standards, as in the act of raising to his feet, forces the runner blades into hard ground, depressions, or furrows. Avoid hitching the team too tight; elevate the tongue by shortening breast straps and lengthening traces. Never oil slide plates.

Select seed of uniform size, and use No. of plate that will drop the number of grains desired.

Directions for operating the Evans planter, taken from the exhibit. (See defendant's record, page 160.)

Directions.

The depth of planting is governed by the driver moving the lever forward in the notches to lower the runners and back toward the driver's seat to make them run shallow. The depth of planting can also be regulated by the holes in the lower end of slotted bar, the upper holes for shallow planting and the lower holes for deep planting.

In hard soil, if the runners will not go in the ground, raise the cap over thes lotted bar so it will catch in the notch on the end of bar and remain there until in turning around at the end of rows; throw the cap off the end of bar so as to let the runners raise out of the ground, and in starting throw the cap over the end of bar as before. It is only necessary to use the cap over the end of slotted bar when planting in very hard soil.

In throwing the cap off or over the end of slotted bar throw the lever back toward the driver's seat as far as possible and then throw the lever forward in the notches to give the proper depth of the runners in the ground.

To raise the runners out of the ground it is only necessary for the driver to take his feet off the foot rest on the end of the tongue, and to throw them down on the ground — place them on the foot rest.

366 To regulate the desired quantity of seed to be dropped change the plates to suit the size of the seed. In changing the plates take off the hopper by unscrewing the nuts at each end of it.

Directions for Setting Up Planter.

Put the wheels on axles and see that the axles are well greased. Connect the front and back frames by the two eyebolts on the end of the side bars of back frame. Use a washer on each side of the beam and screw the nuts up tight. Put on the tongue and then the driver's seat; fasten the lower end of the driver's seat to the iron standard on the tongue with the three holes in it, using the middle hole for the bolt. Unfasten the slotted bar from rock arm No. 25, and put the end with holes in it through the slot in the wood seat beam and down through the slot in the tongue. For ordinary planting put the bolt through next to the lower hole in the slotted bar; then fasten the top of slotted bar as before. Put the foot rest No. 17 on the rear end of tongue and then put on other minor parts. Do not use any grease or oil on the feed plates. If the feed plates in any way get gummed up use nothing but coal oil on them.

367 Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MAN'F'G CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

Examination of witnesses on behalf of the defendant, under the 67th rule, in equity, as amended, before W. F. Trader, notary public, who is hereby agreed upon as special examiner under said rule, at the mayor's office, Xenia, O., this 5th day of August, 1884.

Present: Edward Boyd, for the complainant, and Edward Taggart and C. M. Peck, for the defendant.

By request of parties it is ordered that these depositions be taken by question and answer.

JAMES C. VLEREBOME, a witness produced on behalf of the defendant, being first duly sworn, deposeth and saith, in an-
368 swer to interrogatories propounded to him by C. M. PECK, Esq., of counsel for the defendant, as follows:

Question 1. State your name, age, residence, and occupation.

Answer. James C. Vlerebome; aged 38 years; residence, New Holland, Ohio; traveling man by occupation.

Counsel for defendant offers in evidence a corn-planter and has the same marked "Defendant's Exhibit Buckeye Planter," W. F. Trader, notary public, Greene county, Ohio, Aug. 5, 1884; also a model that is marked Exhibit "Improved Buckeye Machine," W. F. Trader, notary public, Greene county, O., April 11th, 1884.

(To the introduction of which counsel for complainant objects, there being no proof of relevancy.)

Q. 2. What was your occupation in the years 1878 and 1879.

A. In the hardware and agricultural trade in New Holland, Ohio.

Q. 3. For whom were you at work in 1878?

A. For myself.

Q. 4. Please answer the same question as to 1879.

A. A portion of the time for the Shawnee Agricultural Co. of Xenia, O., beginning with them in the fall of the year.

Q. 5. Did you or did you not work for them before the fall of 1879?

A. I did not.

Q. 6. Have you examined the corn-planter marked Defendant's Exhibit "Buckeye Planter?" If so state what you know about said planter.

A. I have; I sold it to R. W. Vincent—he lives in Fayette county, Ohio, Marion township—May 5th, 1878.

Objected to for want of notice in the answer.

369 Q. 7. Of whom did you get said planter?

A. Of the Shawnee Agricultural Co., Xenia, O.

Q. 8. Is said planter now in all respects of its construction like it was when you sold it to Mr. R. W. Vincent?

A. Not altogether.

Q. 9. In what respect or respects has it been changed? And state, if you know, by whom the changes were made and when.

A. There has been a new drill attachment and a hand lever put on by the Shawnee Agricultural Co. It was done in the winter of 1878–'9.

Q. 10. Under what circumstances, and where, were these changes made?

A. The old drill attachment did not work good, and the planter was sent to the Shawnee Agricultural Co. They put on a new drill and also the hand lever.

Q. 11. How do you fix the date you sold this planter to Mr. Vincent as May the 5th, 1878?

A. By my day book and ledger I kept at the time.

Objected to as incompetent.

Q. 12. Have you referred to those books lately to ascertain the date; if so, when?

A. I have in the last two weeks.

Q. 13. Did you ever sell R. W. Vincent any other corn-planter at any time?

A. Not that I know of.

Cross-examination:

Q. 14. Have you your day book with you?

A. I have not.

Q. 15. Where is it?

A. At my home, in New Holland.

Q. 16. Was there any other change made in the planter except those you have mentioned?

A. Not that I know of.

370 Q. 17. Describe the planter as it was when you sold it, as far as devices for elevating and lowering the front frame were concerned.

A. It had a foot lever for holding it in the ground; I don't know that I can say any more.

Q. 18. Was that foot lever in the form of a bridge which spanned the arms to which the front frame was hinged?

A. The foot lever was attached to the rear axle, regulating the front carriage of the planter. I wouldn't call it a bridge. I couldn't call it anything else than a foot lever.

Q. 19. How many of these levers were connected to the axle?

A. Just the one.

Q. 20. Was that the one that the feet rested on?

A. A part of it; yes, sir.

Q. 21. What do you mean by a part of it?

A. The rear portion of the foot lever.

Q. 22. Was that foot piece attached directly to the axle?

A. It was attached to the front and rear both, as I stated before.

Q. 23. Do you mean to the front and rear axle?

A. The front is the main carriage, you know—the part that does the dropping.

Q. 24. How was it attached to the front part?

A. It wasn't attached direct; it was attached through the piece you placed your foot on to raise it.

Q. 25. Where was the attachment to the piece used for raising?

A. In front of the seat piece.

Q. 26. Then I understand that it had two pieces—one at each side of the seat standard and between it and the foot pieces used for elevating—connected to the axle. Is this correct?

Q. To the best of my recollection.

Q. 27. And these pieces which were connected to the axle
371 were also connected at their rear ends to the foot elevating pieces, were they not?

A. To the best of my recollection they were.

Q. 28. What you have called a foot lever was a piece that connected the two pieces on the axle, was it not?

A. I believe so.

Q. 29. Who sent this planter to the Shawnee Agricultural Company?

A. R. W. Vincent.

Q. 30. Were you present when it was sent?

A. I was not.

Q. 31. Who told you that it had been sent?

A. Mr. Vincent.

Q. 32. You didn't see it on its way, did you?

A. No, sir.

Q. 33. When did you next see it after the time you sold it?

A. I was in the field and seen it work the same spring I sold it.

Q. 34. Was that the last time you saw it until called upon to examine it with a view to giving your deposition?

A. I saw it the other day at Mr. Vincent's house, or farm rather.

Q. 35. Was that the only time you have seen it since the spring you sold it?

A. I saw it yesterday evening and this morning; these are the only times.

Objection.—Counsel for complainant objects to answers 9 and 10 in direct examination, it appearing that the witness has no personal knowledge in the matter, and that he testifies from hearsay.

J. C. VLEREBOME.

Also ROBERT W. VINCENT, who, being duly sworn, deposeth and says as follows:

Q. 1. What is your name, age, residence, and occupation?

372 A. Robert W. Vincent; aged 44 years; occupation, a farmer; residence, Fayette county, Marion township.

Q. 2. Have you examined the corn-planter model, Defendant's Exhibit "Buckeye Planter," W. F. Trader, notary public, Greene county, Ohio, Xenia, O., Aug. 5, 1884? If so, state what you know about said planter.

A. Yes, sir; I have. Well, I bought the planter of J. C. Vlerebome, New Holland, Ohio, in May, 1878; did not give satisfaction, and I was ordered to return it to Xenia. I returned it in the winter of 1878–'9. In March, 1879, it was returned to me. It had been changed. The foot lever had been taken off and a hand lever put on; also the drill attachment had been changed.

Q. 3. You say the foot lever had been taken off. When were the present foot levers or treadles put on—I mean those that are now on the machine?

A. The present foot levers were put on in the winter of 1878–'9, when the present hand lever was put on.

Q. 4. Is the machine as it now stands in all respects of its construction the same as when it was returned to you in March, 1879?

A. Yes, sir.

Q. 5. During how many seasons has that machine been used by you since it was returned in March, 1879?

A. For the season of 1879 and each season since.

(Question and answer objected to for irrelevancy and for want of notice in the answer.)

Q. 6. In your section of the country what is the usual corn-planting season?

A. The month of May.

Q. 7. To whom was this planter sent in Xenia to be altered, as you have stated?

A. The Shawnee Agricultural Co.

373 Q. 8. Did you ever buy any other corn-planter of Mr. James C. Vlerebome?

—. No, sir.

Q. 9. Did you ever have any other corn-planter made by the Shawnee Agricultural Co.?

A. No, sir; I never owned but one double corn-planter.

Cross-examination:

Q 10. To whom did you complain about the planter you bought in 1878 not having given satisfaction?

A. To J. C. Vlerebome, the agent.

Q. 11. Had you paid for it at that time?

A. No, sir.

Q. 12. Did you return it for the purpose of having alterations made or with the intention of leaving it with them and not to pay for it?

A. I returned it to give them a chance to fix it, and if it worked I would keep it; if not, return it.

Q. 13. How did you return it?

A. By cars—shipped it from New Holland by cars.

Q. 14. Did you ship it as freight or by express?

A. I am not certain, but I think it was by freight.

Q. 15. Who was the agent that received it from you?

A. George Vlerebome, I think.

Q. 16. Was it delivered at the railway station?

A. Yes, sir.

Q. 17. Did you receive a receipt for it?

A. I have a receipt at home now; it is without date, and I suppose it is for that.

Q. 18. Did you pay the freight on it?

A. I don't recollect. I paid the freight one way or the other; it was 80 cents. I don't recollect whether it was to here or from here.

Q. 19. Was that the only planter you shipped from New Holland?

A. Yes, sir.

374 Q. 20. When did you complain about it not giving satisfaction?

A. During the corn-planting season of 1878.

Q. 21. What month of the year did you ship it here?

A. Don't recollect what month it was; it was in the winter of 1878 and 1879.

Q. 22. Was it before or after the new year?

A. Don't recollect.

Q. —. Did you receive any acknowledgment of its return?

A. I received a letter from Mr. Collier or Mr. Trader, one, stating that they had sent the planter, and that they had made some changes on it. I don't recollect whether I received any acknowledgment of the receipt of it here at the time I sent it.

Q. 24. Where is the letter that you received?

A. I suppose it was burned up among some old papers I destroyed some time ago.

Q. 25. Did you hear Mr. Vlerebome's description of how the planter was constructed; and, if so, is it substantially correct?

A. I did not understand Mr. Vlerebome's description, and I could not describe it myself. I could not describe the parts spoken of. I couldn't recollect how that foot piece was put on.

Q. 26. How do you know it was in March, 1879, the planter was returned to you?

A. I know it was returned in the spring of 1879. I got the exact date from Vlerebome. I want to correct that and say from the books of the Shawnee Agricultural Company here.

Objection.—Counsel for complainant objects to all the answers of witness in which he has given the month in which the planter
375 was returned, it appearing from his last answer to be founded on hearsay and incompetent data.

Q. 27. How do you know it was in 1879?

A. It was the next season after I bought the planter.

Q. 28. How do you know when you bought the planter?

A. I know from the date that it is charged to me on Vlerebome's books; also from my recollection of using it at the time I had it.

Q. 29. What was there particular about its use that enables you to think you bought it in 1878?

A. I had never owned a double planter before, and I was planting a larger crop of corn that year than I ever put out before.

Q. 30. Did Mr. Vlerebome have the planter at his place in New Holland at the time you bought it?

A. Yes, sir; and was delivered at the time.

Q. 31. Did you at that time own a single planter or corn drill?

A. Yes, sir.

Q. 32. From whom did you buy it?

A. I bought that at least three or four years before, I think, of George Vlerebome.

Q. 33. Who made it?

A. It was a Blessing planter; I think one name on the planter was Wickersham, and, I think, made here, and it was a single planter and no mistake about it.

Q. 34. Did you go to Mr. Vlerebome to ascertain the date when you bought the double planter?

A. As to the exact date, May 6, I think he claims, I did; I know from my own personal knowledge and from circumstances that it was May, 1878.

Q. 35. Who else have you talked with about these dates, recently?

A. J. C. Vlerebome, Samuel Collier, Charles Trader, and Mr. Peck, and Mr. Taggart, and Mr. Scoffield.

376 Q. 36. Have you talked about it during the recess since answering the question 29?

A. Yes, sir.

Q. 37. The object of these different conversations was for the purpose of endeavoring to fix the date correctly, was it not?

A. If I understand the question that they were trying to fix the date for one, I will say it was not.

Q. 38. You do not understand my question correctly; it intends to ask you if you were endeavoring to fix in your mind the date correctly?

A. No, sir; I gave you the correct answer before we went to dinner.

Q. 39. My question is not confined to the conversation since dinner, but to all those which you have had on the subject; with this understanding, answer.

A. No, sir.

Q. 40. What was the object?

A. It was just general conversation; it had no object in it.

Q. 41. Whose signature is to the receipt which you say you have, but which bears no date?

A. I don't recollect, sir.

Q. 42. How do you know that the present foot levers were put on the planter in the winter of 1878 and '79?

A. Because it was the only time I ever had it here at the shop, and they were put on here.

Q. 43. Didn't the planter have foot levers on it when you bought it?

A. Yes, sir.

Q. 44. Wherein did those foot levers differ from those on it now?

A. In the shape of them they don't differ any; I think a little longer.

Q. 45. How much longer?

A. There was a chain that run the drill, and it was slack so it run off, and they put on the new levers so as to give it more space between the axles and the runners.

377 Q. 46. Did you observe that the length of the levers had been changed at the time the planter was returned to you, or that the chain had been shortened?

A. I observed that the levers had been changed and the chain stayed on better than before.

Q. 47. Now, how much were the levers lengthened?

A. I do not know.

Q. 48. Was it a foot?

A. No, sir.

Q. 49. Was it an inch?

A. I don't know and had no means of knowing.

Q. 50. Then how can you swear they were lengthened at all?

A. I supposed that the levers would be lengthened easier than to shorten the chains.

Q. 51. I observe that the hand lever and its connections are in a different state of preservation, part of it being very rusty and part of it quite fresh; can you explain why this is?

A. It has been mended two or three times by blacksmiths.

Q. 52. Prior to your returning the planter, or at the time you returned it, did you know what changes were going to be made, or had you seen or had explained to you the improvement?

A. I returned it to have the drill attachment fixed better, and while it was here they put the hand lever on; I didn't know they were going to put this hand lever on until after it was done.

Q. 53. Who assisted you with your corn-planting in 1879?

A. William Shaffer and Joseph Cogan.

Q. 54. Who in 1880?

A. John Nelson and Joseph Cogan, I think it was; it seems to me I had another, but I am not certain.

Q. 55. What is the address of these men at the present time?

A. William Shaffer, a laborer, New Holland, Pickaway
378 county, Ohio; Joseph Cogan, Jackson, Jackson county, last heard from, a laborer, too; John Nelson, Nebraska—I don't know what part.

Re-examination:

Q. 56. Did you make any effort by going to the freight office or railroad office to ascertain what this date should be on—the undated receipt which you have—or to find out when you shipped your planter to Xenia to be altered; if not, why not?

A. I did not, because I understood the books were all burned last August in the fire there.

Q. 57. Did that fire destroy the building and its contents?

A. Most of it; they did not save but very little.

ROB'T W. VINCENT.

Also CHARLES W. TRADER, a witness produced on behalf of defendant, being first duly sworn, deposeth and saith, in answer to questions propounded to him, as follows:

Q. 1. State your name, age, residence, and occupation.

A. C. W. Trader; 48 years of age; manufacturer of implements; Xenia, Ohio.

Q. 2. How, if in any way, were you connected with the Shawnee Agricultural Co., Xenia, since 1876?

A. I am president of the Shawnee Agricultural Co., and have been since 1876.

Q. 3. If your company has manufactured any double or two-horse corn-planters, please state when you commenced their manufacture.

A. We commenced making double corn-planters in 1874.

Q. 4. If you had an agent for the sale of your planters at New Holland, Ohio, in 1878, who was that agent?

A. J. C. Vlerebome was our agent at that time.

379 Q. 5. Did he remain your agent during the entire year of 1878?

A. I think not.

Q. 6. Why not?

A. He went out of business.

Q. 7. About what time?

A. I am unable to say.

Q. 8. At the time he went out of business had he paid you for all of the planters or other implements of yours that he had?

A. I believe he had given his note or notes for them.

Q. 9. What is the date of said note or notes?

A. June, 1878.

Q. 10. After giving those notes did he get any more planters of you?

A. No, sir.

Q. 11. Have you examined the planter marked "The Defendant's Exhibit the Buckeye Planter, W. F. Trader, notary public, Greene Co., Ohio, Aug. 5th, 1884?" If so, please state who made said planter. And if it was sold, by whom and to whom?

A. I have examined it, and the Shawnee Agricultural Company made the planter and sold it to J. C. Vlerebome.

Q. 12. Did Mr. Vlerebome sell it to any one else; if so, to whom?

Objected to, because it does not appear that the witness has any knowledge, and therefore it is calling for hearsay.

Question withdrawn.

Q. 13. State, if you know, what became of that planter after you sold it to Mr. Vlerebome, and give fully all you know about it.

A. Mr. R. W. Vincent bought the planter from Mr. Vlerebome, and because it did not give satisfaction it was returned to the Shawnee Agricultural Co. and a new drill attachment and
380 lever was put on and returned to him—I mean the Mr. Vincent that testified this morning.

Q. 14. How does the planter, as it now stands, compare, in its construction and arrangement of parts, with itself at the time you returned it to Mr. Vincent, after putting on the drill attachment and hand lever?

A. It is identically the same as it was, except the drill attachment, as it now stands, is off.

Q. 15. When was this hand lever and drill attachment put on this planter, and when was it returned to Mr. Vincent with these parts on?

A. They were put on in early spring, and returned to Mr. Vincent in March, 1879.

Q. 16. What, if anything, enables you to fix the date as March 1879, that the planter was returned by you to Mr. Vincent?

A. Mr. Vlerebome, J. C., after having given us notes in settlement of his account, and Mr. Vincent, not having settled with him for the planter, agreed with us that Mr. Vincent settle with us for the planter, so that when we returned it to him (Vincent) we charged the same to him on our books.

Q. 17. What is the date of that charge?

A. March 11, 1879.

Q. 18. When did you last examine your books to get the date of this charge correctly?

A. This forenoon.

Q. 18½. Did you ever ship Mr. Vincent more than this one planter?

A. No, sir.

Q. 19. If your company ever made any more planters with hand and foot levers in all respects like "Exhibit Buckeye Planters" and like "Exhibit Improved Buckeye Machine," please state when
381 the first one was made.

A. They did make them, and the first one was made in the early winter of 1878.

Q. 20. Do you mean it was completed then?

A. Yes, sir.

Q. 21. Who at that time were in the employ of your company as the heads or foremen of the different departments, and also traveling for you?

A. Mr. Rhodes was the foreman of the paint shop, Calvin Phebus was the foreman of the foundry, J. B. Lough was traveling salesman.

Q. 22. Are these men now in the employ of your company; if not, when did they leave you?

A. They are not; Mr. Lough left us in December, 1878, I think; Phebus left us in March, 1878, and I think Rhodes left us in January, 1878, is my recollection.

Q. 23. Have they or either of them been in your employ since they left you?

A. No, sir.

Q. 24. How do you fix the date as above that they left your employ?

A. By reference to our time book.

Q. 25. Have you examined your time book recently to see if the dates given are correct; if so, how recently?

A. Yes, sir; I examined them to-day.

Objection.—Counsel for complainant objects to the foregoing questions and answers unless the books are produced to enable to cross-examine.

Counsel for defendant says the books will be produced before the close of the deposition.

Counsel for complainant further objects that the answers are incompetent, whether the books are produced or not.

Q. 26. Who designed and applied the first hand lever as
382 in "Exhibit Improved Buckeye Machine" to your planters?

A. I believe Mr. S. R. Collier, superintendent of the Shawnee Agricultural Company.

Q. 27. If that first planter was ever used in the field, please state when and by whom.

A. I believe it was used in the spring of 1878 by Mr. Collier and myself; I don't remember the names of others that were there.

Q. 28. When did this trial or use take place, and what was done?

A. On the farm of Mr. Eustus Bonner, and we were simply trying the lever to see if it would force the frame or runner from and into the ground.

Q. 29. Was any corn planted with the machine at that time, and also state where Mr. Bonner's farm is?

A. No; there was no corn planted; Mr. Bonner's farm is about a mile and a half south of Xenia.

Q. 30. How did the machine work?

A. Perfectly satisfactory.

Q. 31. How did you get to Mr. Bonner's farm?

A. I believe we put the planter on a dray and took it out; balance of us rode on the dray.

Q. 32. Is there any circumstance connected with that trial of the machine by which you are enabled to fix the time of the year?

A. Mr. Bonner, I believe, was planting corn in the same field; we were testing the lever on ground that was both rocky and poorly plowed.

Q. 33. Do you remember being out on any other occasion with this machine?

A. Yes, sir.

Q. 33½. When was that, and who was present?

A. That was in the fall of the year 1878; Mr. Collier and Mr. Lough, and our drayman, and the man that owned the team, Mr. Ledbetter, were present.

383 Q. 34. Where was this, and, if you can, state the time of the year a little more definitely.

A. It was on the farm of Richard Galloway, about three-quarters of a mile northwest of Xenia, and it was in ground that had been plowed for wheat that fall. We went through an orchard and we found apples good enough to eat, and that is about as near as I can locate the date.

Q. 35. Do you remember whether any corn was planted by the machine at this last-mentioned time?

A. There was.

Q. 36. Were the hand and foot levers still on the machine at this time?

A. Yes, sir.

Q. 37. After the Vincent machine did your company make and sell any more planters having hand and foot levers, and in all respects like "Exhibit Buckeye Planter" and "Improved Buckeye Machine?"

A. Yes, sir.

Q. 38. State, if you can, how many were sold for the season of 1879 and each season thereafter.

A. I cannot tell how many were sold; we never made a great many.

Q. 39. Wouldn't your books distinguish between the planters sold by your company which had hand and foot levers and those of a different construction, so that you can tell from them how many with hand and foot levers were sold?

A. No, sir.

Q. 40. Is your company still manufacturing double corn-planters; if not, when did you stop manufacturing them, and why?

A. I don't think we got out any new stock since 1879, but we put up some planters in 1880 and 1881 of stock that we had on hand; and the reasons why was that we were not able to carry on the manufacture of both rakes and planters.

384 Q. 41. I herewith show you a copy of patent 177,176, dated May 9th, 1876, to J. F. Trader for horse hay-rake, and ask if that is the rake to which you refer as having been manufactured by your company?

Objected.—Counsel for complainant objects to last question because it is irrelevant and incompetent.

A. Yes, sir.

Q. 42. When did your company commence the manufacture of that rake, and is it still engaged in its manufacture?

Objected.—Last objection repeated.

A. 1875, and are still making it.

Q. 43. Will you please produce one of the hand and foot levers used by your company on this rake?

Objected.—Last objection repeated.

A. Well, this is the one.

Counsel for defendant offers said hand and foot lever in evidence, and has the same marked "Defendant's Exhibit Trader's Rake Lever," W. F. Trader, notary public, Greene county, Ohio, Aug. 5th, 1884.

To the introduction of which exhibit complainant's counsel objects for irrelevancy.

Adjourned until 9 o'clock a. m. August 6th, 1884.

Met pursuant to adjournment.
Same parties present.

Q. 44. Have you with you your time and other books to show the dates at which Messrs. Lough, Phebus, and Rhodes left the employ of your company, and the date at which you shipped Mr. Vincent his planter?

A. Yes, sir.

385 Counsel for defendant tenders said books, as far as the matters inquired about are concerned, for the inspection of complainant's counsel.

Cross-examination:

Q. 45. Did you make an affidavit in this cause before W. F. Trader on April 5th last?

A. I made one; I don't recollect the date exactly.

Q. 46. Were the facts then sworn to true?

A. They were, so far as my recollection then served me.

Q. 47. In answer three you state that your company commenced the manufacture of double corn-planters in 1874. Is that correct?

A. I believe it is.

Q. 48. If, in the affidavit referred to, you swore that your company commenced to make these double corn-planters in 1876, how do you reconcile these two statements?

Objection.—Objected to by counsel for defendant unless the affidavit is shown to the witness, and for the further reason that counsel for the defendant believes that the affidavit has been misquoted.

A. At that time I had only in mind the planter for which we had taken out letters patent, and that we had two years previously *had* made double corn-planters.

Q. 49. How do you know that Mr. Vincent bought a planter from Mr. Vlerebome?

A. Because Mr. Vlerebome had bought planters from us and had turned over an account to us against Mr. Vincent for a double corn-planter, for which Mr. Vincent settled with us *for*.

386 Q. 50. How did you become advised that the planter did not give satisfaction?

A. I believe that Mr. Vlerebome, our agent, advised us of the fact.

Q. 51. When the planter was returned how were you advised of its ownership?

A. We had been notified that the planter had been returned to us for repairs.

Q. 52. By whom were you notified?

A. I believe that our agent, Mr. Vlerebome, notified us.

Q. 53. By letter?

A. I have no recollection of it now.

Q. 54. Did you hear Mr. Vincent testify yesterday that he shipped the planter direct?

A. No, sir.

Q. 55. Were you present during the taking of his testimony?

A. Part of the time.

Q. 56. How did you know when the planter was received that it was Mr. Vincent's?

A. We believed it was from information received of its shipment.

Q. 57. Are the drops or seeding mechanism now on the planter which were on it when you sold it to Mr. Vlerebome?

A. I believe so.

Q. 58. Have you examined to ascertain?

A. No, sir.

Q. 59. Between the seasons for planting corn in 1878 and 1879 you made a change in your rotary drops, did you not?

A. I am not prepared to say.

Q. 60. Why not?

A. Because I don't remember.

Q. 61. Do you remember of making a change in this respect at any time?

A. Yes, sir.

Q. 62. The planters made before the change were failures, or gave such poor satisfaction that great numbers of them were returned, were they not?

387 A. That was true in regard to the planter that we made, I believe, as early as 1874, but not true as regards the planter made immediately prior to the one we made last.

Q. 63. Is it not true that the planters you made in 1877 and for the season of 1878 did not give satisfaction, and that a good many of them were returned and changed?

A. The rotrary drop made previously to the one made last was not satisfactory to ourselves, but do not remember of any being returned at that time, but believe that we did put on some of our new drops on the old planters; I don't say what year it was; I don't remember.

Q. 64. Was the new drop satisfactory to yourselves and users?

A. It was, I believe; gave good satisfaction.

Q. 65. When you adapted the hand lever did you make any change in the frame-work of the machine except to dispense with the foot piece and auxiliary levers?

A. I believe not.

Q. 66. When you changed the Vincent planter did you make any change in the foot levers for elevating the front frames or on those on the planter now, the same which were on it when sold to Vlerebome?

A. I have no knowledge of my own in regard to that matter.

Q. 67. Have you any knowledge of your own that a new drill attachment was put on it at that time?

A. Yes, sir.

Q. 68. Have you personal knowledge of all that was done to it?

A. So far as the essentials are concerned, I believe I have.

Q. 69. What do — mean by essentials?

A. I had in mind the hand lever and the drill attachment.

388 Q. 70. Did the drill attachment include a new chain?

A. We drove our drill attachment by a chain; the first drill attachment had no chain, I believe; it required a chain.

Q. 71. When you made the change did you put on a new chain?

A. Do you mean a new chain substituted for an old chain that had been working the drill?

Q. 72. No; I mean to ask whether you put on a chain which had not been on that planter before it was returned to you?

A. The drill we put on his planter was driven by a chain, and the only drill, to my recollection, that we ever made that was driven by a chain.

Q. 73. Then I understand that the drill attachment as originally put on that planter was not driven by a chain; is this correct?

A. I believe it is, as far as I recollect now.

Q. 74. Was it part of the agreement with Mr. J. C. Vlerebome that you should collect the price of planters he had sold from others than Mr. Vincent?

A. Not that I remember of.

Q. 75. How did you give Mr. Vlerebome credit for the Vincent planter on account?

A. Mr. Vlerebome had settled with us by giving us his notes; we credited the amount on one of his notes, and charged Mr. Vincent with the planter.

Q. 76. Did you do this at the time the agreement was made?

A. I don't remember the date of the agreement; it was done when the planter was returned to Mr. Vincent.

Q. 77. Without knowing the date of the agreement can you not say whether you gave him the credit at the time you agreed he should have it?

A. I am satisfied that it wasn't done till the planter was returned to Mr. Vincent.

389 Answer objected to as not responsive and swift.

Q. 78. How do you understand my last question?

A. I understand you to ask that at the time Mr. Vlerebome consented that Mr. Vincent should settle with us for the planter—that then and there we charged Mr. Vincent and gave Mr. Vlerebome credit.

Q. 79. In which of my questions did I ask you about charging the planter to anybody?

Objection.—Objected to, as the record shows for itself, and as not calling for any fact in the case.

A. I believe in none.

Q. 80. Now, will you state whether you gave Mr. Vlerebome credit, as before inquired of you, at the time the agreement was made to do so?

A. I believe it was at or about that time.

Q. 81. When was the credit given?

A. I believe it was in March, 1879.

Q. 82. What was the amount of the credit given him at that time?

A. Thirty-five dollars.

Q. 83. Have you examined your books to ascertain this?

A. Yes, sir.

Q. 84. How was the planter shipped to Mr. Vincent?

A. By railroad, as freight.

Q. 85. Do you keep a shipping book?

A. We kept a shipping book every year except that year, 1879.

Q. 86. Did you receive a shipping bill or receipt from the railroad?

A. I have every reason to believe that we did.

Q. 87. Do you preserve these receipts?

A. That is our intention and aim.

390 Q. 88. Have you made any examination for the receipt received from the railroad?

A. I made a hasty one this morning. I was not able to find it. I found the shipping bill at the railroad office, as kept by them.

Q. 89. Do you keep your receipts in a book?

A. Every year, except the year 1879, when we took the railroad receipt.

Q. 90. Did you search through the receipts of any other year except 1879?

A. I did not.

Q. 91. Do you keep letter books for preserving copies of letters written?

A. Yes, sir.

Q. 92. Did you advise Mr. Vincent by letter of the shipment of the planter?

A. Do not remember.

Q. 93. What season of the year do you mean by "early winter" in answer No. 19?

A. I had in my mind the month of January.

Q. 94. Where is the planter you made in January, 1878?

A. I can't tell.

Q. 95. When did you last see it?

A. I don't think I have seen it since the year 1878.

Q. 96. Was it a new planter?

A. Yes, sir.

Q. 97. Was there feed mechanism on it at the time you say you tested it at Bonner's?

A. Yes, sir.

Q. 98. What kind?

A. Can't say.

Q. 99. Can you say whether a change was made in the feed before the test at Richard Galloway's?

A. I cannot.

Q. 100. Was the model, "Exhibit Improved Buckeye Machine," made the same year that the first planter was?

A. I am not certain, but I am inclined to believe it was not.

391 Q. 101. In your affidavit in this cause heretofore referred to did you not swear that it was?

Objection.—Counsel for defendant objected to last question as incompetent for the reason that the affidavit is not produced and presented to the witness.

A. I do not remember.

Q. 102. Have you on any other occasion stated that the model was made in 1878?

Objection.—Counsel for defendant objects to the last question as incompetent.

A. I don't remember now. If I did I believed it had been at that time.

Q. 103. How many planters did your company sell in 1878?

A. I didn't count them, but I believe from two to three hundred.

Q. 104. How many in 1879?

A. I can't say definitely; I haven't looked the matter up.

Q. 105. State as nearly as you can.

A. I can't say. It might have been from one to two hundred or from one to two hundred and fifty; I don't know.

Q. 106. Some of these were of the kind you made in 1878, were they not?

A. Yes, sir.

Q. 107. What proportion?

A. Well, without and depending on anything but my memory, I should think there was more of the planter made in 1878 than of the one made in 1879.

Q. 108. How many did you make and sell in 1880 and 1881, respectively?

A. Not a great many; I can't tell the number.

Q. 109. How many traveling salesmen did you have in 1878, 1879, and 1880, and who were they?

392 A. My recollection is we had two in 1878, 1879, and 1880, and they were J. B. Lough, J. C. Vlerebome, and, I believe, W. F. Frye, and my recollection is we only had two employed at a time.

Q. 110. Is the model, "Exhibit Improved Buckeye Machine," arranged now as it was originally made?

A. No, sir.

Q. 111. It was originally made to represent the planter shown in your patent of 1876, was it not?

A. Yes, sir.

Q. 112. Who made the change in the model?

A. I believe Isaac B. Jones.

Q. 113. When did you first sell a planter constructed with lever as shown on "Exhibit Buckeye Planter?"

A. I believe in the spring of 1879 was the first.

Q. 114. To whom?

A. I have no way of knowing, except the one sold to Mr. Vincent.

Q. 115. Have you a record of the names of all persons to whom you sold planters in 1879?

A. I believe we have.

Q. 116. Will you, after the noon recess, produce the books containing such record?

A. I could, but I don't want to take the responsibility upon myself is the way I feel about it.

Q. 117. Who do you wish to share the responsibility with you?

A. I would not wish to do it without the advice of some of the other members of the company.

Q. 118. You may consult with other members of the company and give your answer after recess; and I further ask you if you can and will produce your shipping book and letter book for 1880 and the book which contains the original entry of the credit of thirty-five dollars to Mr. Vlerebome?

A. I have no objections, I believe, if I can.

393 Recess.

Q. 119. What conclusion have you came to about producing the books mentioned before recess?

A. After a conversation with my associate in business we thought it best not to produce the books, as there was no record kept as to who got planters with hand levers. I would say, with regard to the letter book, that I find no record of any letter to Mr. Vincent, either in 1879 or up to October, 1880. We did not copy all the letters that we wrote, only such as we deemed as important. We did not anticipate anything of this kind or we would have had it copied. As to the credit on Vlerebome's note, all the memorandum I have is on our bills receivable book; it is all that I can find. As to the shipping book, we concluded, and advising with my associate in business, we thought it was not important and we thought we would not produce it.

Q. 120. Who is the associate you refer to?

A. Mr. S. R. Collier.

Q. 121. Is this the Mr. Collier who has been present during the taking of these depositions?

A. He has been present.

Q. 122. Am I to understand that you positively refuse to produce any of the books called for except the bills receivable book?

A. I do.

Counsel for defendant states that several of the books before referred to in direct examination were tendered and are now here, and have been since this morning, and that counsel for complainant has examined the bills receivable book as far as the entry of

credit on Mr. Vlerebome's note is concerned, and had the same explained to him by the witness.

394 Counsel for complainant replies that he has not seen the books referred to in direct examination, and relies on his former objection as to the incompetency of the testimony.

Q. 123. You have stated that your company sold planters like "Exhibit Buckeye Planter" during 1879, but that you could not give the name of any person to whom such a planter was sold, and the only object I had in desiring the production of the book containing the record of sales of that year was that we might obtain the names of the purchasers, and through them ascertain whether or not any of the planters for that year were like said exhibit, and now that you refuse to produce the book I ask you if you will prepare a statement giving the name and address of each person to whom you have sold planters for that season which you have any reason for supposing were like the "Exhibit Buckeye Planter?"

A. No, sir.

Q. 124. What is your reason for refusing?

A. I believe the customers to whom we sold goods to is a matter that belongs to ourselves, and we don't think we are under any obligations to give any names to any one.

Q. 125. Is it desirable to keep the use and names of the users of corn-planters concealed?

A. I don't know that it is particular.

Q. 126. Then what harm could it do to you or your business to reveal the names of your former customers now that you have ceased to manufacture corn-planters?

A. I don't know that it would be any harm.

Q. 127. Well, upon reflection will you consent to give the names as requested?

A. No, sir.

395 Q. 128. You have been rather active in aiding the defense in this case, and have either tried yourself or given advice to others for the purpose of enabling them to find one of these planters sold in 1879, have you not?

A. I have not been any more active in finding a planter of 1879 for the defendant than I was to find a planter for the plaintiff. There ain't any money on either side of it for me.

Q. 129. Did you find one for the complainant or did the complainant, with your aid, find one?

A. The plaintiff did, with my aid, find one that was sold in 1880.

Q. 130. When you started to see that planter you supposed it had been sold in 1879 and as represented, did you not?

A. I hardly think I could so have represented, because our books show that it had been sold to that man in 1880.

Q. 131. Did your company in 1880 ship out hand levers like that on "Exhibit Buckeye Planter," to be put on planters theretofore sold, without the return of the planters for that purpose to the shops?

A. I believe we did, although I am not positive, but I am inclined to think we did.

Q. 132. Can you state where or the sections of the country they were sent?

A. No, sir; I cannot.

Q. 133. Did you allow the defendant or its representatives to examine the record of your sales for the year 1879?

A. I don't know as I gave any permit to it; I believe they saw our book.

Re-examination:

Q. 134. During recess did you make further search for Mr. Vincent's shipping receipt; if so, did you find it and can you produce it?

A. Yes, sir; here it is.

396 Counsel for defendant offers said receipt in evidence and has the same marked "Exhibit Vincent Shipping Receipt,', W. F. Trader, notary public, Greene county, Ohio, August 6th, 1884

EXHIBIT VINCENT'S SHIPPING RECEIPT.

MARCH 10, 1879.

Received in good order of Shawnee Agricultural Company, at the depot of the Dayton & Southeastern Railroad in ——, the following goods, to be forwarded to —— ——, at tariff rates subject to the conditions of the company's bills of lading:

Marks.	Articles.	Weight.
Rob't Vincent	2 wheels	250
New Holland	1 front D planter	
O.	1 rear D planter	

J. S. ARMSTRONG.

Q. 135. Please turn to your time books and state from them at what dates, as shown by them, Messrs. Rhodes, Phebus, and Lough left your employ, giving the full names of each.

Objection.—Objected to as not re-examination and for incompetency in the form in which the question is put.

A. Rhodes quit working for us on the 23d day of January, 1878, Calvin Phebus on the 4th day of March, 1878, and J. B. Lough on the 11th day of December, 1878. I don't know Rhodes' full name.

Q. 136. Referring to the Vincent shipping bill, which is dated March 10th, 1879, please state whose signature, if you know,

397 appears at the bottom in blue pencil.

A. The agent at that time; J. S. Armstrong, agent of the Dayton & Southeastern railroad.

Q. 137. Is this Mr. J. S. Armstrong still the agent at the Dayton & Southeastern railroad?

A. No, sir.

Q. 138. Do you know where he lives or is to be found.

A. He lives in Xenia.

Q. 139. Did the defendant or any of its representatives or attorneys examine your shipping or sales book, except so far as the entry concerning Mr. Vincent's machine is concerned?

A. No, sir; I think not.

Q. 140. Did you give them any permission to make any other examination?

A. No, sir.

Recross-examination:

Q. 141. Does the name of Phebus appear in your time book from which you read?

A. No, sir.

Re-examination:

Q. 142. How do you fix the time by which Mr. Phebus left your employment?

Objection.—Objected to by counsel for complainant.

A. Up to that date, March 4th, 1878, Phebus made our castings by the ton, and when he left the men under his employ, whose names appear on our time book, finished the work in our foundry for that season.

C. W. TRADER.

398 Also CALVIN R. PHEBUS, a witness produced on behalf of the defendant, who, being duly sworn, testifies as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is Calvin R. Phebus; my occupation is a moulder, and I live in Dayton, Ohio.

Q. 2. Where and for whom were you at work in 1877 and the fore part of 1878, and what were you doing?

A. I was working in Xenia, Ohio, and for the Shawnee Agricultural Co.; I was working at my trade—moulding.

Q. 3. Who was the foreman in the foundry where you were working?

A. I was.

Q. 4. When did you cease working for the Shawnee Agricultural Co., and where did you go from there?

A. I ceased working for the Shawnee Agricultural Co. on or about the 4th day of March, 1878, and went to Dayton, Ohio; I left Xenia on the 11th day of March, 1878.

Q. 5. Have you worked for the Shawnee Agricultural Co. any since you left them, in 1878?

A. I have not.

Counsel for defendant offer in evidence a pattern, and has the same marked "Defendant's Exhibit Lever Former," W. F. Trader, notary public, Greene county, Ohio, August 6th, 1884.

Q. 6. I call your attention to Defendant's Exhibit Lever Former, and ask you whether or not you ever saw the same before; and, if so, when and where and under what circumstances? State fully.

Objection.—Objected to as irrelevant and for want of notice in the answer.

A. I saw the same die or former in the Shawnee Agricultural Company's foundry; it was brought to me by Mr. Collier, the
399 superintendent. His order was to make one, which I did, after which it was taken back and thickened up a little bit, and I made another one; it was either in the winter of 1877 or the spring of 1878.

Q. 7. Was or was it not before you left there, in March, 1878?

A. It was before I left there, in 1878.

Q. 8. You say that you made one; please to explain just what you made.

A. They were both on the face just like this is now, with the exception that the first one was not as thick as the last one; Mr. Collier took it back and put a strip on it, and I made the last one.

Q. 9. Explain fully the process of making the two articles which you say you made; also the material from which they were made.

A. Well, sir, these forms were both made out of cast iron, and the purpose for which they were used was for a blacksmith to form or bend irons in the shape of this casting; the wrought iron that was made over this form was used for a lever.

Q. 10. What did you use for a pattern in making your cast-iron formers which you refer to in your last answer?

A. Used this pattern right here, "Defendant's Exhibit Lever Former."

Q. 11. Point out the change made in this pattern exhibit lever former which you say Mr. Collier made after you made the first casting.

A. This strip that surrounds it on the outer edge.

Q. 12. When did you first learn that your casting was to be used as a former for a lever?

A. Mr. Collier told me when he brought the pattern to me.

Q. 13. Have you seen the double corn-planter, "Exhibit Buckeye Planter," with the hand lever attached, now standing in the
400 shops of the Shawnee Agricultural Company?

A. I saw one there this morning.

Q. 14. When did you first see such a corn-planter with such a hand lever attached, and where?

A. I saw it first in the office of the Shawnee Agricultural Company before I left their employ.

Q. 15. State whether or not it was put up in readiness for use apparently, and also state any circumstance that enables you to remember of seeing it there.

A. I state that it was ready for use, and every time I went into the office Mr. Trader was on the seat a working it—Mr. Charles Trader, I mean.

Q. 16. You may say what you mean when you say in your last answer you saw Mr. Trader working it.

A. I mean that Mr. Trader would be sitting on the seat with the lever in his hand shaking it back and forward.

Cross-examination:

Q. 17. What was the first work you did when you went to Dayton?

A. I didn't do anything for about 5½ weeks—somewhere along in that neighborhood. I went in the country and rented a little house with about an acre of ground to it; raised tobacco on the place; stayed in the country until the fall, until the weather got pretty tolerably cool; I cannot tell exactly the time. After I got my garden truck out of the ground I sold my tobacco standing in the field, and moved back to Dayton and went to moulding.

Q. 18. With whom did you raise the tobacco on the shares?

A. A man by the name of Adam Eby.

Q. 19. Where does he live?

401 A. He lives down the C., H. & D. R. R. about three miles, between Dayton and Carrollton.

Q. 20. For whom did you do the moulding?

A. W. P. Callahan & Co.

Q. 21. How long did you stay with W. P. Callahan & Co.?

A. I don't know, sir.

Q. 22. Did you work by the day?

A. I did, sir.

Q. 23. Who did you next work for?

A. I think—I won't be positive—I think the next firm I worked for was Woodman Machine Co.

Q. 24. When did you commence working for them?

A. As I couldn't tell you when I quit working for Callahan, of course I couldn't tell you when I commenced at Woodman's. I commenced at Woodman's just as soon as the car work was out at Callahan's.

Q. 25. What year was it?

A. I don't know as it is any use of me going over all of this, but I can tell. It might have been in the latter part of 1879, 1880, or 1881.

Q. 26. Where are you employed now?

A. At the Dayton Steam Pump Works.

Q. 27. When did you commence with them?

A. Some time last winter.

Q. 28. How and where were you employed before you were with the Shawnee Agricultural Co.?

A. I was employed moulding at W. P. Callahan & Co.'s.

Q. 29. When did you commence working for the Shawnee Agricultural Co.?

A. I think in 1875 or 1876—somewhere along there. I don't know exactly.

402 Q. 29½. Who were the other moulders there at the time you left?

A. One's name was Ed. Smith, and John Stirling, and a boy by the name of Hank, and I don't know his other name. McDermott might have been there, but I don't know if he was or not.

Q. 30. How many styles of levers did the Shawnee Agricultural Company make while you were with them?

A. To the best of my knowledge, they made two.

Q. Did you cast any other former block except the two you have mentioned?

A. Not to my knowledge.

Q. Were many levers shaped on the former?

A. Couldn't tell you; that is the blacksmith's work.

CALVIN P. PHEBUS.

Also H. H. RHODES, a witness produced on behalf of the defendant, who, being duly sworn, testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. H. H. Rhodes; age, 40 years; occupation, painter; residence, Springfield, Ohio.

Q. 2. For whom were you at work in 1877 and in the fore part of 1878?

A. The Shawnee Agricultural Company.

Q. 3. Where?

A. Xenia, Ohio.

Q. 4. What was you doing for them?

A. I was foreman of their paint department.

Q. 5. About what time did you leave their employ?

A. The latter part of January, 1878.

Q. —. Have you seen the corn-planter now standing in the shops of the Shawnee Agricultural Company, marked Exhibit "Buckeye Planter?"

A. Yes, sir.

403 Q. 7. When, if ever, did you first see a similar planter having the hand lever and where did you see it?

A. I saw it while I was working for them—the Shawnee Agricultural Company—in the shop.

Q. 8. What, if anything, did you have to do with making or finishing the planters, and what enables you to remember the hand lever?

A. I superintended the work and done most of the striping, and what makes me remember it — it is something similar to a lever on the Champion reaper and mower.

Q. 9. In your last answer you say you superintended the work. What particular branch of the work do you refer to?

A. The painting.

Q. 10. You may state whether or not, while you were working for the Shawnee Agricultural Company, you remember of having painted a hand lever similar to the one on the "Exhibit Buckeye Planter."

A. I remember of it being painted, and I striped it.

Q. 11. Since you left the Shawnee Agricultural Company, in 1878, have you ever been in their employ?

A. No, sir.

Cross-examination:

Q. 12. What enables you to state that you left the employ of the Shawnee Agricultural Company in January, 1878?

A. I have a memorandum at home, and I went to work with the Champion Machine Company after I quit the Shawnee Agricultural Company; I worked for the Champion Machine Co. five or six weeks, and went to work for Mart, Foss & Co. in March, 1878.

404 Q. 13. With whom have you recently talked about the planter you have mentioned?

A. Mr. Collier and Mr. Trader, and I don't remember who else.

Q. 14. Is Mr. Trader president and Mr. Collier superintendent of the Shawnee Agricultural Company?

A. I believe they were when I worked for them.

Q. 15. Were you familiar with the Champion reaper and mower before you went to work for the Champion Machine Company?

A. I was before I went to work for them this last time.

Q. 16. Was the planter you saw a new one?

A. I could not say.

Q. 17. How often did you see it?

A. That is something I could not tell.

Q. 18. What part of the shops did you see it in?

A. I saw it in the paint shop, in the third story, in parts. I saw it in the office after it was set up.

Q. 19. Was it freshly painted before leaving the paint shop.

A. Yes, sir.

Q. 20. Then it would at least have the appearance of a new planter?

A. Yes, sir.

Q. 21. Who, if any one, did you see do any work on it?

A. I cannot tell.

Q. 22. Who were the painters in the shop while it was there?

A. Seth White and, I think, Mr. Collier's son. I can't remember the names of the others, it has been so long.

H. H. RHODES.

Adjourned until August 7th, 1884, at 9 o'clock a. m.

405 Met in pursuance of adjournment, the same parties being present.

SAMUEL R. COLLIER was produced as a witness for defendant, and, being duly sworn, testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. Samuel R. Collier; 55 years of age; manufacturer is my occupation—manufacturer of agricultural implements; I reside in Xenia, Ohio; I am superintendent of the Shawnee Agricultural Company.

Q. 2. If your company made any double or two-horse corn-planters please state when they began to make them and if they are still making them.

A. I think they began to make double corn-planters in 1874, but are not making any now. We stopped making them in 1880.

Q. 3. Have you examined the corn-planter marked "Defendant's Exhibit Buckeye Planter," W. H. Trader, notary public, Greene county, Ohio, August 5th, 1884? If so, state, if you know, who made said planter and if it was sold to whom and when.

A. Yes, sir; I examined the planter. Our company made it. I don't personally know who it was sold to; the selling was done by other parties.

Q. 4. Do you know who got the planter for use?

A. Well, to the best of my knowledge, it was Robert Vincent. He lives in Fayette county, near New Holland.

Q. 5. State fully all you know about this planter.

A. After Mr. Vincent had got the planter it didn't work as he thought it should; he reported to the shop, and I went out and fixed it. In the winter of 1878 and 1879 he returned the
406 planter to the shop and I put a new drill attachment on it and a hand lever that is now on it or one similar; also the wood lever that attaches the front and rear frames.

Q. 6. What became of the planter after the levers were put on as you stated?

A. It was shipped back to Mr. Vincent.

Q. 7. Do you know when it was shipped back to him?

A. Some time in the spring of 1879. I don't know the date

Q. 8. Did you ever see this planter before the levers were put on it as you have stated and while it was in Mr. Vincent's possession?

A. I did.

Q. 9. Where and when?

A. It was in corn-planting time in 1878; on his farm, near New Holland.

Q. 10. If your company ever made any other with hand and foot levers, constructed and arranged in all respects like the "Exhibit Buckeye Planter" and like this model improved Buckeye machine, before returning Mr. Vincent's machine as you have stated, please state when the first one was made and state all the circumstances connected therewith.

A. Yes; we made a planter before that one was returned to Mr. Vincent constructed like it is. In the winter of 1877 and 1878 I concluded to make a combined hand and foot lever, as the one we had then in use did not seem to give as good satisfaction as the levers of some other manufacturers were putting on their planters. The Champion folks, the firm of Beedle & Kelly, of Troy, Ohio, were selling their planters in this neighborhood. Their lever, being better than ours, required us to make some changes to get as good a one or better than theirs, and the present lever was the result of that experiment.

407 Q. 11. Who, if any one, did you talk to about making such a change?

Objection.—Objected to as incompetent.

A. Mr. Lough, who was in my employ at that time; he and I talked this matter over in regard to improving our lever.

Q. 12. After this conversation what did you then do? State as fully as you can how you went to work to improve your lever.

A. I set a planter up in the shop, and after considerable of experimenting got up this present lever, with one exception; that had a cross-piece riveted on in front of it an inch or so above where the latch is hinged or bolted for the purpose of putting the foot on, but I afterwards concluded that that wasn't wanted there, and I did not put it onto any more.

Q. 13. What do you mean by the present lever? And, if you can, please produce one of said levers.

A. I mean the lever that is on that planter that is down at the shop or one like it or this one (producing lever).

Defendant's counsel offers said lever in evidence and has the same marked "Exhibit Buckeye Hand Lever," W. F. Trader, notary public, Greene county, O., Aug. 7th, 1884.

Objection.—Objected to as irrelevant.

Q. 14. How were these hand levers like the exhibit just offered made?

A. They were made in three pieces; first, the iron was heated and bent on a form; they were then welded together; that was the main body of the lever—that was the construction of it, with the exception of the latch, which was in separate pieces and put on afterwards.

408 Q. 15. Please look at "Defendant's Exhibit Lever Former" and state if you know, what it is, who made it, and when it was made.

A. I made that former in the winter of 1877 and 1878; it is just a block of wood.

Q. 16. What are such blocks of wood called and what are they for?

A. It is a pattern from which to make an iron casting or form that we bend our levers on.

Q. 17. Was any iron form made from this pattern; if so, who cast it?

A. Yes, sir; there was, two; the casting was done by Calvin Phebus, who was then in our employ as foreman in our foundry.

Q. 18. Were any hand levers for corn-planters made over these cast formers to which you refer?

A. All the hand levers that we made, with the exception of one, was formed over one of these formers.

Q. 19. What has become of those two cast formers?

A. One of them was broken up and melted over; the other one is at the shop now.

Q. 20. Did you ever see a planter at work in the field having hand and foot levers in all respects like "Exhibit Buckeye Planter" and this model, "Improved Buckeye Machine;" if so, when and where, and who were present?

A. I worked a planter myself at two different times; once in Mr. Bonner's field, in the spring of 1878, at which time Mr. C. W. Trader was with me, and once in Richard Galloway's field, when Mr. C. W. Trader and Mr. Lough were with me; that was in the latter part of the summer of 1878; I don't remember exactly the time.

409 Q. 21. At this latter time, when you worked the planter in Mr. Galloway's field, was Mr. Lough in the employ of your company?

A. He was.

Q. 22. If there is any circumstance which occurred at that time which enables you to fix the time of the year, please state it; also in what sort of a field it was in which you worked the planter.

A. The field in which we were working had been plowed for wheat; the wheat hadn't been sowed yet; also in going to the field we drove through an orchard, and I recollect of getting apples that were ripe.

Q. 23. What month in the year do they usually plow for wheat in this section?

A. They plough for wheat in August, and I suppose from that time on until it is time to sow wheat, which is in September and October both; the main portion of it is put in in September.

Q. 24. Referring now to the first planter with hand and foot levers like the model "Improved Buckeye Machine," what was done with it after it was finished?

A. I think I kept it about the shop; I believe it was set up in the office.

Q. 25. Do you know what finally became of it, or do you know whether it was sold?

A. I think we kept it in the office as a sample until about the time we quit making planters, when it was sold. I don't know to whom it was sold.

Q. 26. Were any of these planters with hand and foot levers sold for the season's planting of 1879; if so, about how many? And also state if you sold for that season your former style of planter.

A. There was planters sold in the year of 1879 with the hand and foot lever attached; I do not know how many. We also sold

410 planters with the old style foot lever on in 1879. I don't know how many.

Q. 27. Were both styles of these planters sold for the season of 1879?

A. Yes, sir.

Q. 28. Of which kind did you sell the most, and why?

A. I think we sold the most with the old style foot lever on; the reason was that we had a lot of those already finished.

Q. 29. Why was that the reason?

A. We had to use those up before our customers found out that we had a different kind of lever; otherwise they would have been of no value to us.

Q. 30. Referring again to the two castings on which you formed the hand levers, why was one of them broken up and discarded?

A. The crease around it in which the lever was formed was too narrow in the first one; I then enlarged the pattern and made it wider.

Q. 31. What pattern do you mean, and how did you enlarge it?

A. This pattern lying here (indicating Def't's Exhibit Lever Form); I enlarged it by adding this little strip which is tacked all around it, which is about a quarter of an inch wide, probably.

Q. 32. When was this change in the pattern made?

A. In the winter of 1877–'8.

Q. 33. Were any of the hand levers formed on the first cast former?

A. There might have been two or three; it was so narrow, though, that the blacksmith battered them up so that we did not finish more than two or three on it, and I do not know that they were ever put on the planters.

Q. 34. When did you last see the enlarged cast former cast
411 from the pattern "Exhibit Lever Former," as it now stands?

A. I do not know just what day; it has been, though, within ten days.

Q. 35. Could this cast former be used for any other purpose than bending hand levers for your corn-planters in the work of your shops?

A. No, sir; I think not.

Q. 36. Who kept the books showing the time that your employees worked for you?

A. I kept them.

Q. 37. Can you state from said books when Calvin Phebus and Mr. Rhodes, the foreman of your paint shops, left your employ?

A. I think I can.

Q. 38. Please refer to said books and state when they each left and how you fix the time.

Objection.—Objected to as incompetent.

A. Mr. Rhodes' name appears on our time book for the last time for the week ending January 25th, 1878; Phebus' name is not on the time book, as he was making castings by the ton; neither he or his men, as he settled with them himself. The week that Phebus left us ended on March 8th, 1878. On that week is the first I have account of any of the men working in the foundry; from that time on the men worked by the day for the company. Phebus done no more work for us.

Q. 39. Was Phebus ever in your employ after that?

A. No, sir.

Q. 40. Were the men whose names appear on your time book for the first time on the week ending March 8th, 1878, the same men who had before worked under Phebus and under his pay?

A. Yes, sir; they were the same men.

Q. 41. What was your habit in keeping your time books; were you regular and careful in making your entries?

412 Objection.—Objected to as leading and irrelevant.

A. I took the number of hours each man worked that day every evening. I took every man's time down carefully and gave him credit for every hour he worked each hour that evening.

Q. 42. Do you know when Mr. Lough left the employ of your company?

A. I think it was in December, 1879. The way that I know when Mr. Lough left us is by our books, and he left us in December, 1878. I will have to correct that answer.

Objection.—Corrected answer objected to as incompetent.

Recess.

Q. 43. Has Mr. Rhodes been in the employ of your company since he left, in January, 1878?

A. He has not.

Q. 44. Who did the work of bending or forming the levers on the cast form?

A. A man by the name of John Beachem, who was foreman in our blacksmith shop at that time.

Q. 45. From what was the pattern, "Exhibit Lever Former," made?

Objection.—Objected to as irrelevant, because the pattern is here, the best evidence.

A. The shape of it was determined by a lever we made by hand without any form.

Q. 46. Who formed the first lever from which the pattern, "Exhibit Lever Former," was made?

A. Had it made by John Beachem.

Q. 47. Did you ever see the hand lever on one of these planters like the "Exhibit Buckeye Planter" used in any other way than by hand while the machine was at work; if so, how was it
413 used, and when and where, if you know?

A. I recollect seeing a man at one time using one of those levers, and he had his foot against the rear part of the lever. I can't locate the place nor the man's name just now.

Q. 48. Do you know for what purpose he had his foot on the hand lever?

A. To shove the front runners into the ground.

Q. 49. State, if you know, when this model, "Improved Buckeye Machine," was first made, and whether any change in its construction has been made since then.

A. I think it was made in 1877. It was changed afterwards, when the hand and foot lever was put on it. The change, I think, was made in 1879. To the best of my knowledge the change was made by a man named Johns. Mr. Trader, I think, had that done.

Q. 50. Do you know what time in 1879 the change was made?

A. I don't believe I do.

Q. 51. Can you give the time of the year when that change was made?

A. My impression is that is was done in the spring of the year, before our men started out on the road.

Cross-examination:

Q. 52. How did Mr. Vincent report to the company that the planter did not work satisfactorily?

A. I think he reported to Mr. Vlerebome and Mr. Vlerebome to the company?

Q. 53. Why do you think that?

A. My recollection is that the complaint came from Vlerebome.

Q. 54. How did Vlerebome convey it?

A. I think by letter to the company.

414 Q. 55. Have you that letter?

A. I have not, and never did have it in my possession.

Q. 56. Did you ever see it?

A. Never, to my knowledge.

Q. 57. What reason have you for saying that the complaint was conveyed by letter?

A. The information in regard to this matter came to me through our secretary, M. C. W. Trader.

Q. 58. Then when you swore in your direct examination that Mr. Vincent reported the matter to the shop you testified to a matter that you had no personal knowledge of. Is this true?

A. I only had knowledge of that through our secretary.

Q. 59. How did you go to Mr. Vincent's place to fix the planter?

A. I went from here to Washington, C. H., on the cars; I then hired a horse and buggy and drove out to Mr. Vincent's.

Q. 60. Did you go out alone?

A. I think I did.

Q. 61. Did you return alone?

A. Yes, sir; by the same means and conveyance that I went.

Q. 62. From whom did you get this horse and buggy?

A. I can't tell you other than I got it at a livery stable; don't know the man's name.

Q. 63. Did you stop at a hotel in Washington, C. H.?

A. I did not.

Q. 64. Did you go to New Holland?

A. I don't recollect whether I went to New Holland or not.

Q. 65. Who did you see at Vincent's?

A. I seen Robert Vincent.

Q. 66. Anybody else?

A. My recollection is that there was somebody else there, but I don't know who it was, nor I ain't positive that there was anybody else there.

415 Q. 67. Where was the planter?

A. It was out in the cornfield.

Q. 68. Being used?

A. They were not working with it when I was there.

Q. 69. What was the matter with it?

A. The principal matter with it was that one of the uprights had come loose. The upright was a piece that held the drill attachment or the shaft of the drill attachment.

Q. 70. After fixing it how did it work?

A. I don't know how it did work, only it was returned to the shop afterward and had a new drill attachment put on it.

Q. 71. What kind of a drop was on the planter at the time?

A. The rotary drop.

Q. 72. The same that is on it now?

A. Yes, sir.

Q. 73. How do you know that that identical planter was returned to your shops?

A. From the fact that when I was out there to fix it in tightening up this upright I put some little sticks in the holes to make the bolts fit tight and when it came back those had not worked out yet.

Q. 74. Might not any person whose planter had worked loose have put in sticks the same way?

A. Yes, sir.

Q. 75. Could you identify your sticks from others of the same kind?

A. No, sir; if a man had put in the same kind of sticks that I did I could not have told them.

Q. 77. Was there anything peculiar about those you used?

A. Well, I don't know that there was.

Q. 78. And yet you are willing to testify that the identical planter which you saw was returned to your shop, are you?

416 A. Yes, from the knowledge I had of the planter as I saw it there, its situation and appearance at the time I seen it at Mr. Vincent's, and its appearance when it was returned to the shops I believe it was the same planter.

Q. 79. How did it differ from others made at the same time?

A. Its general construction was the same as any other planter that we made with the drill attachment on them.

Q. 80. How do you know that it was returned in the winter of 1878 and 1879?

A. After it was repaired it was returned to Mr. Vincent and I only know by the shipping of it.

Q. 81. My question inquired as to how you knew when it was returned to your shop and not when it was shipped therefrom; please answer this.

A. I don't know the date when it was returned to our shop, only it was between the time when I went out to see it and the date of the shipping bill.

Q. 82. It may have been during the summer of 1878, may it not?

A. No; it could not have been in the summer. I think it was late in 1878 or early in 1879 it was sent there.

Q. 83. What was done with the planter after its return—was it put with other planters?

A. I think not.

Q. 84. Where was it put?

A. It was put on the second floor of the shop.

Q. 85. In what department?

A. The main building.

Q. 86. Were you advised of the reasons of its return?

A. Yes, sir.

Q. 87. How?

A. Mr. C. W. Trader told me that it was returned and why.

417 Q. 88. Did Mr. Trader tell you how he knew why it was returned?

A. I don't think he did.

Q. 89. What did you understand to be the objections; did they relate to the drill attachment?

A. I think so.

Q. 90. When you commenced putting on the hand lever you used the foot treadles which had been prepared for the other style of planters, did you not?

A. Never changed the long levers that connected the front frame.

Q. 91. Does this answer apply to the Vincent planter?

A. The levers that are in this Vincent planter now are the only style of lever that we used on that planter.

Q. 92. And are the identical ones that were originally put on the planter, are they not?

A. No, sir.

Q. 93. Why were they changed?

A. When the planter was returned I found the holes in the lever that the bolts went through, the lever and the coupling at the front and at the point, and also the holes that went through the levers and the coupling on the front cross-piece of the main frame were very much worn, and I put on other levers that the bolts would fit tight in and make the planter more substantial and work better with his new drill.

Q. 94. How was the drill attachment driven as originally on the planter?

A. There was a cog gear bolted fast on the main wheel; a pinion working in that cog rotated a shaft running in the same direction as the axle; on that shaft was a beveled wheel revolving a shaft that run at right angles to that shaft which run to a bearing

418 on the front cross-piece of the main frame and was continued on to a little wheel with a crank pin in it, bolted fast to the front frame.

Q. 95. How do you know that the planter was shipped to Mr. Vincent in the spring of 1879?

A. Only by a shipping bill that we have of that date.

Objection.—Counsel for complainant objects to answer to question No. 7 for reasons appearing in last answer.

Q. 96. You have stated that your only reason for saying that the planter was returned to you at the time stated was because you knew when it was shipped. This knowledge you acquire also from the shipping bill, do you not?

A. Yes; I got those dates from the shipping bill.

Counsel for complainant repeats his last objection to all answers relating to the return of the planter.

Q. 97. Was the first hand lever you made put onto a planter?

A. Yes, sir.

Q. 98. Was this the planter you tested at Bonner's?

A. I think not.

Q. 99. What became of that planter with the first lever?

A. I think that lever was taken off it and another one put on and the planter was sold—that is, as far as I know. It was difficult to trace that individual planter.

Q. 100. Was that first lever the one that had the foot rest on?

A. Yes, sir.

Q. 101. How soon after taking this off did you put the next one on?

A. I expect I put it on right away—likely in ten days and maybe the same day.

Q. 102. How soon after putting it on did you test it and was that the one tested at Bonner's?

A. I don't know for sure that the first lever that I made on
419 that planter was the one tested at Bonner's or not. I didn't test it for some considerable time after. I put it on at Mr. Bonner's.

Q. 103. Was the first hand lever without a foot rest which you put on a planter tested in the field?

A. I think it was.

Q. 104. How soon after putting it on?

A. Well, it was some considerable time after I put it on before I tested it. The weather was not suitable, for one thing, as it was in the winter time.

Q. 105. Why did you wait until after the corn-planting season to test it?

A. They were planting corn in the same field in which I tested it at Mr. Bonner's. I didn't wait until after the corn-planting season.

Q. 106. Wasn't it late and just about the close of the season?

A. I don't know whether it was or not.

Q. 107. Who, if any one, besides Mr. Beachem assisted in the making and arranging the lever that was tested?

A. A man by the name of Robert Cannon.

Q. 108. Don't you remember of any one else going out with you to Bonner's at the time of the test besides Mr. Trader?

A. It is likely that the man who drove our dray went along, but I am not sure about that.

Q. 109. Who was he?

A. He *was* by the name of Jordan Robb; I think — was his name.

Q. 110. How many horses did you take out?

A. One.

Q. 111. How many did you use in the test of the planter?

A. Two.

Q. 112. Whose were they?

A. They were the team that was planting corn in the
420 field or a team that was harrowing in that field. I will put it in that way, anyway. There were two teams in the field—one planting and the other harrowing—and one of them was put in our planter.

Q. 113. Have you always told the same story about your getting up this lever which you have testified to here?

Objection.—Objected to as incompetent.

A. The main facts as to its getting up I have always told the same, to my knowledge.

Q. 114. Did you make an affidavit in this cause last April before Mr. W. F. Trader, notary public?

A. I made an affidavit before Mr. Trader in this cause, but don't recollect the date.

Q. 115. How do you know that this first planter was sold about the time you quit making planters?

A. From the fact that we had no planters in 1881 about the shop.

Q. 116. Did you sell it?

A. I did not.

Q. 117. Did you see it sold?

A. Not to my knowledge.

Q. 118. Did your company have a pattern-maker?

A. No, sir, they didn't. I was the pattern-maker myself. I had a man help me once in the pattern-room.

Q. 119. Who was this man?

A. A man by the name of Isaac Jones.

Q. 120. Was the model, "Improved Buckeye Machine," changed by putting on the hand lever for the purpose of enabling your traveling men to make sales?

A. Yes, sir.

Q. 121. Did your traveling men make sales the fall and
421 winter after you put on this hand lever for the following season's trade of planters embodying that feature?

A. I think so.

Q. 122. And in doing so did they use the model to illustrate the character of the planter?

A. They sometimes, I supposed, used the model, but owing to the fact that we had a lot of these old-styled levers on hand we endeavored to work them off whenever we could.

Q. 123. You say that you recollect of seeing a man using one of these levers with his foot. Do you wish to be understood that it was with his foot alone?

A. He wasn't touching the lever at that time only with his foot, shoving it into the ground.

Q. 124. Was there a latch on that lever?

A. There was.

Q. 125. Was it like the latch on "Exhibit Buckeye Planter?"

A. Not just exactly.

Q 126. What was the difference?

A. There was but two notches in that lever—the two end ones.

Q. 127. I understand that you changed a number of these latches after the planters had left your shop. Is this correct?

A. I don't believe we changed any of the latches to the hand and foot lever; we changed some of the latches that we put on to the foot lever, substituting wrought for cast iron latches.

Q. 128. Do you know who changed the one you saw the man operate?

A. I do not.

Q. 129. Did you change the latch on a hand lever for John Sutton?

A. I did not; the boy told me he did it himself.

Q. 130. With the metal between the notch removed the latch could not be employed to regulate depth, could it?

A. I think not.

422 Q. 131. About how many planters with the hand and foot levers were sold for the season of 1879?

A. I couldn't tell.

Q. 132. Approximate it as near as you can.

A. I couldn't give the number, or anywhere near it; it wasn't a great many. Most that we sold was the other style of planter.

Q. 133. About how many were made for that season?

A. I don't think there were over two or three hundred of both kinds. I may be mistaken. From fifty to a hundred. I paid but little attention to it.

Q. 134. About how many with the hand lever were made for that year?

A. I couldn't tell.

Q. 135. Can you not form any idea?

A. I don't hardly know what to say to that. The fact is I don't know how many there was; there was a small portion of them—not more than one-fourth we made.

Q. 136. Were you superintendent at the time?

A. I was.

Q. 137. How many planters with the hand levers was sold for the trade for the season of 1880, as near as you can state?

A. Well, I couldn't tell you how many planters we sold for 1880 with the hand lever on.

Q. 138. Were there any sold?

A. There was.

Q. 139. Were there any sold for the season of 1881?

A. I think there was a few. That was about the wind-up of the planters with us.

Q. 140. Did you ever see any of the planters with the hand lever which was sold for the season of 1879 in operation after leaving your shop?

A. I don't recollect that I did.

423 Q. 141. Have you searched to find out?

A. Yes, sir.

Q. 142. Did you succeed?

A. No, sir.

Q. 143. Can you give me the name of any person who purchased one such planter for that year's planting?

A. I cannot; I didn't do any of the selling.

Q. 144. Did you superintend the shipping?

A. I did not.

Q. 145. Who did?

A. C. W. Trader.

Q. 146. Did Mr. Trader pack the planters for shipping; if not, who did?

A. He did not; the planters were packed by different hands about the shop and stored in the warehouse and shipped from there.

Q. 147. Who superintended the packing?

A. Well, that was generally done by the man who put up the work; when he finished his work he packed it ready to go to the warehouse.

Q. 148. Who had charge of getting them out of the warehouse ready to be shipped?

A. When there was a shipment to be made tags were made out in the office and given to the drayman, and him and some other man about the shop, and sometimes Mr. Trader or myself, would help to get out and ship the planters to fill that bill or order.

Q. 149. Can you give me the name of any person who purchased a planter with a hand lever for the season of 1880?

A. I think I can.

Q. 150. Please give me all you can.

A. Mr. J. I. Williamson bought one in 1880, I think, to plant corn in the year 1880; I don't know as I can give you any other name.

Q. 151. When did Mr. John Sutton get his?

A. I think he got his in the year 1880.

424 Q. 152. When you were searching for planters how many did you find of any kind?

A. One, with the hand lever.

Adjourned until 9 o'clock a. m., August 8th, 1884.

Met pursuant to adjournment, at 9 o'clock a. m., August 8th, 1884, the same parties present.

Q. 153. Did you keep a cast-iron former in connection with the manufacture of planters made prior to 1878?

A. We did not.

Q. 154. Answer same question with reference to hay-rakes.

A. I think we use a former to make some portions of the hay-rake.

Q. 155. Have you any reason for saying that Phebus made the casting from Exhibit Lever Former other than that he was the foreman of the foundry in the winter of 1877 and 1878?

A. When I took the pattern into the foundry for the purpose of having the iron casting made off of it I recollect of talking to Mr. Phebus about it.

Q. 156. Was any person present during the conversation?

A. I suppose the hands who were working in the foundry were in there at work; this conversation between Phebus and me was inside of the foundry.

Q. 157. Who were these workmen?

A. Will have to refer to my time book for their names (referring to time book); McDermott, Fitzgerald, Whipple, Sterling, and Smith; these were the men who were working there, but I don't know that they were all working there at the day this was made; foundry men are pretty uncertain quantity, and do not always work.

425 Q. 158. What was Whipple's Christian name?

A. I cannot give you the Christian name of any operative, for I have but their surnames on my book.

Q. 159. Over what period of time does your book extend?

A. This book refers to the week ending Friday, February 2d, 1877—this is the first week in the book—and the last record here is Friday, March 28th, 1879. At the time this last former was made Phebus was working by the ton. That time was prior to the date that these men's names appear in my time book, but, to the best of my knowledge, they were working for Mr. Phebus and in the shop at that time.

Q. 160. Will you allow me to examine the time book to which you have just referred?

A. Yes; I have no objection. (Hands time book over.)

Q. —. You have stated that two kinds of rotary drops were made by your company; when was the first one made?

A. The first rotary drop that we made was in 1874; the second rotary drop we made was in 1875; that one we changed in 1876 and 1877, and made it the same as that shown on the Vincent planter.

Q. 162. What do you mean by changing the second one in 1876 and 1877; was there a change made in each of these years?

A. I mean that the change was made in the winter of 1876 and 1877.

Q. 163. Describe the rotary as it was used prior to the last change.

A. The feed plate, prior to the last change, was cast with spurs attached to the under side of it for the purpose of rotating it; there was a driver located underneath that plate.

426 Q. 164. Describe the change which was made on this plate and the manner of driving it.

A. When the change was made there was a star-shaped wheel that rotated on a pivot on the bottom plate. The seed plates were cast in the form of a ring with two little holes in a lug, and attached to this star wheel. The plates were then rotated by a driver located beneath this star, with points working alternately against these points on the star wheel when the driver was moved back and forth.

Q. 165. Was this the last change made in the rotary drop?

A. Yes, sir.

Q. 166. Did the planters which were put out for the season of 1877 contain this drop?

A. I think so.

Q. 167. Did you make any other kind of two-horse planters than those mentioned after 1874?

A. Yes; we made a slide planter.

Q. 168. When did you make it?

A. We made the slide planters during the years of 1875 and 1876.

Q. 169. Mr. Trader has testified that no corn was used when the planter was taken to Bonner's field, and that the operation of the lever was perfectly satisfactory; is this also your recollection?

A. I think that there was no corn used in the planter; it was the lever alone that we were testing; it worked satisfactory.

Q. 170. No further test of the lever was necessary to prove its operation, were there?

A. Yes; to make ourselves feel better satisfied with its operation in rough and uneven ground, we took it out in the fall of 1878 and experimented with it in Mr. Richard Galloway's field.

Q. 171. Did you on that occasion also experiment with the drop?

A. We did.

427 Q. 172. What was your object in doing that?

A. We had the chain drill on it at that time, and we wanted to see how that would work at that time.

Q. 173. What kind of satisfaction did the drop before the last one give?

A. It did not give good satisfaction.

Q. 174. Was the first rotary a success?

A. No, sir.

Q. 175. Were those made in 1875 and 1876 successes?

A. Well, they worked pretty well.

Q. 176. Did you sell rotary and slide planters during the same years?

A. We did.

Q. 177. How does "Exhibit Buckeye Planter" happen to be in your shop now?

A. Mr. Scoffield had it sent there—that is, to the best of my knowledge.

Q. 178. Did you see it when it arrived?

A. I did.

Q. 179. Was it set up?

A. It was not.

Q. 180. Did you assist in putting it together?

A. I think I did.

Q. 181. Did you use any parts other than those that came with it?

A. I did not.

Q. 182. Did the catch and the bolt and nut which attached it to the lever come with it?

A. They did.

Q. 183. What is your opinion, from the appearance of these three pieces as compared with the other parts of the hand lever, as to their having been used for any length of time?

A. I think that they had been used the same length of time as the balance of the lever.

Q. 184. Do you not discover any difference in the appearance of these parts?

A. I didn't notice any.

428 Q. 185. What was the name of the colored man who assisted Beachem in 1877?

A. Robert Cannon.

Q. 186. Did you have a colored man named Ben. something working for you?

A. Yes; we had a man by the name of Ben. Moses working for us before Beachem came there.

Q. 187. When did Beachem come?

A. I can't tell just now when he commenced.

Q. 188. What did Ben. Moses do?

A. Worked in the blacksmith shop.

Q. 189. As foreman or assistant?

A. He was foreman.

Q. 190. When did he quit?

A. I cannot tell now; I could tell by referring to my books.

Q. 191. Could you tell when Beachem commenced by referring to your books?

A. I think I could.

Q. 192. Please make the reference and state when Moses quit and Beachem commenced.

A. I see Moses' name appears on my time book, I think, the last time in the week ending July 20th, 1877. Beachem's name appears the first time in my time book the week ending Dec. 21st, 1877.

Q. 193. About what time did your shops close down in the year 1879?

A. We shut down May 17th, 1878, and opened up the week ending December 6th, 1878.

Q. 194. Answer the same question, as nearly as you can, as to 1879.

A. I can't tell from this time book.

Q. 195. Answer as nearly as you can from memory.

A. Well, I would say that we were closed down during the months of July and August, and possibly more time than that.

429 Q. 196. Why was there so much difference in the length of time the shops were shut down in these two years?

A. I quote one from dates in my time book and the other from recollection alone.

Q. 197. If, since answering the above question, you have examined your time book and can state when you shut down, please do so.

A. By reference to my time book I think we shut down in the spring of 1879, May 16th.

Q. 198. Is it your best recollection that you opened up that year in September?

A. My best recollection is that we opened up in October.

Q. 199. Are you a stockholder and an officer in the Shawnee Agricultural Company?

A. Yes, sir.

Q. 200. Mr. Trader has stated that he declined to give the names of any person to whom your company sold planters for the season of 1879, taken from the record of the same in your books, or to produce the books for the purpose, after consultation with you; do you decline to produce the books or to give the information from them?

A. Yes, sir.

Q. 201. Why?

A. From the scope that this investigation seems to be going over it would bring all our private business before the public, as both parties to this suit would most likely want the books produced.

Q. 202. The witness is advised by counsel that he does not desire even to look at the books, but that the witness shall read from the books the names of persons to whom planters were sold in 1879, or that he may copy such names without producing the books
430 and from such copy read the names, and asks further if, with this understanding, he will furnish the information sought.

Counsel for defendant also joins in the request that this may be done, as defendant is desirous to get this information.

A. I do decline to give the information asked for until I could consult other members of our company.

Q. 203. What other members do you want to consult with?

A. C. W. Trader.

Q. 204. Did you consult with him yesterday during the noon recess on this matter?

A. I talked with Mr. Trader on this matter yesterday. He told me that he was requested to produce the books, and I told him that I was opposed to that, for reasons which I have before stated.

Q. 205. Who else were present at that conversation?

A. No one but Mr. Trader.

Q. 206. Did Mr. C. W. Trader get up a hand lever which was applied to a corn-planter?

A. Not to my knowledge.

Q. 207. Have you any recollection of any one about your establishment getting up a lever for a planter about the time you got up yours?

A. I have not.

Q. 208. Or at any other time?

A. No, sir.

Q. 209. Will you produce your company's letter book for 1880?

A. I will not.

Q. 210. Are you acqnainted with Mr. Benjamin Kuhns and Mr. James A. Marlay, of Dayton, Ohio?

A. I am somewhat acquainted with Mr. Kuhns and Mr. Marlay also.

431 Q. 211. Did you have an interview with these gentlemen at your office last May?

A. I recollect of talking with Mr. Kuhns, but I do not recollect the date now. I don't recollect of talking to Mr. Marlay.

Q. 212. Was Mr. Marlay present and was this the only occasion that they were there together?

A. I don't know whether they were ever there together but once or not. I had a talk, I think, twice with Mr. Kuhns; don't know that Mr. Marlay was present during that conversation.

Q. 213. Was Mr. Marlay present in the affair at the time?

A. Mr. Marlay was in the office, but I think the conversation between Mr. Kuhns and I was in the shop.

Q. 214. On that occasion did you give any reason for thinking that you had gotten up the hand lever in 1878?

A. I don't think I did.

Q. 215. Did you not state, in substance, that your only reason for thinking you had gotten it up in 1878 was that you used it on the planter for two seasons and that you thought you had not made or sold any planter after 1880, but that if you were mistaken as to the fact of having made and sold any after 1880 you would then be mistaken in thinking you had gotten up the device in 1878, and that, instead, it would be 1879?

A. I think not. The fact is we quit making planters in 1880; only after that we only worked off some stock that had been carried over.

Recess.

Re-examination:

Q. 216. Referring to Mr. Vincent's planter which was returned to your shop and upon which you put a new drill attachment,
432 please state more fully than you have the construction of the old drill attachment that was on the machine and what was the matter with it.

A. (Witness asked to have his former answer read, for the purpose of beginning where he left off.) That answer just read describes the drill attachment in detail, except the connection between the front and rear frames, which was constructed with two universal points on that connection. To one of those universal points was attached a square shaft; to the other universal point was attached a hollow piece of casting or sleeve. The hole in that casting was square, to fit that shaft. That is the construction of that part of the drill not before given. One trouble in its general construction was that the square shaft was too short, and sometimes, when the front of the planter would drop into a low place, that short shaft would slip out of the sleeve, which broke the connection between the front and rear frames.

Q. 217. Why did you call Mr. C. W. Trader "our secretary?"

A. He keeps and has charge of our books.

Q. 218. In answers to cross-questions Nos. 81, 95, and 96, referring to way in which you fix the return and shipment of the Vincent planter, what did you mean by the "shipping bill?"

A. I meant the bill of lading that was sent with the goods to be signed by the agent and returned to our office.

Q. 219. Is this the paper you mean (handing witness "Exhibit Vincent's Shipping Receipt")?

A. This is the bill I mean.

Q. 220. You were asked if you remembered of any one else going out with you to the test in Bonner's field besides Mr. Trader.
433 Please answer that matter again, and state whether William King was present at that test.

A. I don't recollect of Mr. King being there, though he might have been.

Q. 221. Referring to the planters with hand levers which were sold for the season of 1879, you were asked in cross-question No. 141 if you had ever tried to find one. How much of a search did you make and how many planters did you go to see, if any?

A. I went to see three different planters, spending about a half a day, I suppose, and maybe three-quarters of time.

Q. 222. In your affidavit made in this cause I notice that you say that in the summer of 1878 that you constructed a combined hand and foot lever for your corn-planters; why did you, at the time you made that affidavit, fix that date?

A. My best recollection at the time that affidavit was made was taken from my memory without having referred to any dates; I located the time the summer of 1878.

Q. 223. At the times your shops were shut down in 1878 and 1879 was anything done at them or were any of your men employed?

A. After our shops stopped running we kept some men to finish putting up the goods and shipping—a portion of the time we have only two or three men—keeping things straight about the shop or working on repairs.

Q. 224. How frequently would you personally be at the shop at such times that you were shut down?

A. I was there every day unless I was sick or absent from the city.

Q. 225. Have you, since yesterday forenoon, looked around your shops to see whether the casting made from the pattern, "Ex-
434 hibit Lever Former," is still there?

A. I see it laying beside the blacksmith shop this morning.

Q. 226. With the exception of the one which was broken up and melted over was there ever any other pattern or casting for a former made at your shops at all resembling this one, like "Exhibit Lever Former?"

A. There was one made beside the one that was broken up off this pattern, just as it now is.

Q. 227. My question was, Was there ever any other than the one you saw this morning which at all resembled it or the pattern, "Exhibit Lever Former?"

A. No, sir; there is no other former about the shop resembling that one.

Q. 228. Was there ever any other one about the shop resembling that one?

A. No, sir.

Q. 229. Who was present or had anything to do with the making of the first hand levers from which the pattern, "Exhibit Lever Former," was shaped?

Objection.—Objected to as not re-examination.

A. John Beachem and Robert Cannon.

Q. 230. Any one else?

A. About our shop there were several men at work, but I don't know that any of them took any notice of what I was doing or knew that we were making this lever.

Recross-examination:

Q. 231. How did you keep account of castings made for you by Mr. Phebus?

A. I weighed them up on Friday evening or Saturday morning of each week and gave him a ticket stating the number of pounds.

435 Q. 232. Did you not keep a record of the weight of castings for different purposes?

A. Weighed them all together.

S. R. COLLIER.

Also JOHN P. BEACHEM was produced as a witness on behalf of the defendant, who, being duly sworn, testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. John P. Beachem; residence on Hill street, Xenia, Ohio; 40 years of age; I have two trades—plasterer and blacksmith.

Q. 2. For whom were you to work and what were you doing during the year of 1878 and the latter part of the year 1877?

A. I went to work for the Shawnee Agricultural Co. in December, 1877, and worked on through the season until they shut down, in the spring, at blacksmithing.

Q. 3. Have you worked for said company since that time, and to what extent?

A. Yes, sir; I worked for them every season since that time till last fall from the time they commenced until they shut down, each season that they needed a blacksmith.

Q. 4. Have you seen the corn-planter now standing in the Shawnee Agricultural Co.'s shop having a hand lever attached thereto, which planter is marked "Exhibit Buckeye Planter?"

A. I have.

Q. 5. You may state who made the first hand lever constructed similar to the one on said Buckeye planter, so far as you know, and where it was made.

A. I made the first one; it was made in the shop of the Shawnee Agricultural Works.

Q. 6. How came you to make it; who was present, if any
436 one, and who, if any one, assisted you in making it?

A. I made it for Mr. Collier, with his instructions, and the man who helped me was Robert Cannon.

Q. 7. What other persons, if any, were present?

A. There wasn't anybody.

Q. 8. Was any former or die used in constructing the first hand lever?

A. There was not.

Q. 9. I now show you a wooden pattern, marked "Defendant's Exhibit Lever Former," and ask you if you know of any former or saw any former at the shop of the Shawnee Agricultural Co. while you were at work there which was cast or seemed to have been cast from this pattern?

A. Yes, sir; I have.

Q. 10. When did you last see such cast former?

A. About half past one o'clock to-day, down by the southeast corner of the blacksmith shop.

Q. 11. You may state, if you know, what such cast-iron former was used for.

A. It was made to form the lower part of the hand lever that was to be attached to a corn-planter.

Q. 12. State who used it for the purposes named.

A. I used it.

Q. 13. Explain how it was used or how you used it.

Objection.—Objected to as immaterial and irrelevant.

A. I would set it on a block and heat a piece of iron and lay it on the lower corner, and the helper would hold it with a pair of tongs, and I would shape the two shoulders, and I would heat it again and lay it back on the block and make the bends.

437 Q. 14. How many castings were made, as far as you know, from this pattern?

Objection.—The last objection repeated.

A. Two.

Q. 15. How did they differ from each other, if at all?

A. The first was not as wide as the iron one used, and it would make a ridge on one side.

Q. 16. State whether or not there were any cast-iron forms about the shops of the Shawnee Agricultural Company while you were at work there which were similar to or would be mistaken for the former cast from this pattern.

A. There was not.

JOHN P. BEACHEM.

Also THOMAS J. STERLING was produced as a witness for the defendant, who, being duly sworn, testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is Thomas J. Sterling; my residence is Xenia, Greene county, Ohio; occupation, a moulder.

Q. 2. Where were you employed during the year 1878 and the latter part of the year 1877 and what were you doing?

A. I was employed by the Shawnee Agricultural Company, helping in the foundry.

Q. 3. Please look at this pattern, "Exhibit Lever Former," and state if you ever saw it before and ever had anything to do with it.

A. I have seen this in the Shawnee foundry, and have helped to make castings off of it.

438 Q. 4. Who did you help to make castings off of it?

A. Calvin R. Phebus. He was the foreman of the foundry.

Q. 5. How many castings did you help to make off of the pattern?

A. Two.

Q. 6. Do you know what became of them?

—. One, I think, was destroyed and the other is in their possession yet.

Q. 7. When did you see the other last?

A. Yesterday.

Q. 8. Did you help Mr. Phebus make both of these castings?

A. I did.

Q. 9. About how long a time was it after the first one was made before the second one was made?

A. Not more than two or three days.

Q. 10. Do you know what the castings made from this pattern were for?

A. A lever-former.

Q. 11. Did you ever see any corn-planters at the Shawnee Agricultural Company with hand and foot levers on them, like the model "improved Buckeye machine?"

A. One.

Q. 12. Where was this one?

A. In the office.

Q. 13. Who was foreman of the different departments of the shop at the time you saw this planter?

Objection.—Whole of the deposition up to this point objected to as immaterial and irrelevant.

A. Phebus, of the foundry; Rhodes, of the paint shop, and the others I don't remember.

Q. 14. State, as near as you can, when it was you saw this planter in the office.

A. I think it was early in 1878.

Cross-examination:

439 Q. 15. I observe that you didn't state your age in answer to the first question. How old are you?

A. Twenty-eight next November.

Q. 16. How long did you work in the Shawnee foundry?

A. Up to the present season.

Q. 17. Do you expect to go back when they start up?

A. I have no definite plans formed.

Q. 18. Who succeeded Phebus as foreman of the foundry?

A. McDermott, I think.

Q. 19. Is McDermott still foreman; if not, who succeeded him?

A. He is not; Charles Verra succeeded him; Henry Whipple succeeded Verra; Andrew Rowe succeeded Whipple.

Q. 20. What year was Whipple foreman?

A. It is impossible for me to tell.

Q. 21. What year was Roe foreman?

A. In 1880, I believe.

Q. 22. What year was Verra foreman?

A. I believe he was there in the fall of 1878 and spring of 1879.

Q. 23. What reason have you for thinking you saw the planter in the office early in 1878?

A. I remember of them trying the new lever on it.

Q. 24. Yes, but how do you remember when they tried the new lever on it?

A. From having helped to make the former and seeing them make the lever on the former.

Q. 25. The lever which you saw on the planter had been shaped on the former had it not?

A. I think it had.

T. J. STERLING.

Adjourned to meet August 9th, 1884, at 9 o'clock a. m.

440 Met in pursuance of adjournment; the same parties present.

Also SETH A. WHITE, a witness for the defendant, was produced and, after being duly sworn, testified as follows:

Q. 1. State your name, age, residence, and occupation.

A. Seth A. White is my name; age, 33 years; residence is Xenia, Ohio, and my occupation is a painter.

Q. 2. What were you doing and for whom and where were you at work in 1877 and 1878?

A. In the fall and winter and spring of 1877 and 1878 I was working for the Shawnee Agricultural Works; I was painting.

Q. 3. What were you painting and who was at work with you?

A. We were painting rakes and some few planters; I don't remember of anybody in particular except Rhodes; there were others working there, but I do not remember particular.

Q. 4. Who was the foreman in the paint shop?

A. H. H. Rhodes was the foreman at that time.

Q. 5. Have you examined the corn-planter marked "Defendant's Exhibit Buckeye Planter," which is now standing in the shops of the Shawnee Agricultural Company in Xenia?

A. I have.

Q. 6. You may state whether or not any corn-planter having a hand lever, similar to the lever now attached to the said "Exhibit Buckeye Planter," was to your knowledge painted in the shops of the Shawnee Agricultural Company during the time that H. H. Rhodes was foreman of that paint shop?

A. We painted some few, not many, while Mr. Rhodes was foreman there, similar to that one there now.

441 Q. 7. Who did the painting of the hand lever?

A. I think I painted them all.

Q. 8. I now show you hand lever which has been offered in evidence as "Defendant's Exhibit Corn-Planter Hand Lever," and ask you how the hand lever painted by you when Mr. H. H. Rhodes was foreman of the paint shop compared to this exhibit.

A. I don't know exactly how to answer the question so that it would be proper; that is similar to the ones painted at that time—the same thing, you might say.

Q. 9. What is your recollection as to the time Mr. Rhodes ceased to work for the Shawnee Agricultural Co.?

A. It was some time in January, 1878.

Cross-examination:

Q. 10. About how many of these levers did you paint, as stated; were there as many as one hundred?

A. Not while Mr. Rhodes was there. I don't think there was more than two or three painted while Mr. Rhodes was there.

Q. 11. Were these put on planters?

A. There was one put on a planter that I remember of.

Q. 12. What was done with the others?

A. We had nothing to do with putting them on planters. We painted them; was all we done.

Q. 13. Did you continue right along painting them after Mr. Rhodes left?

A. We did for some time.

Q. 14. About how many did you paint before stopping?

A. It might have been seventy-five; it might have been one hundred and fifty; that is about all that we built then.

442 Q. 15. Who succeeded Mr. Rhodes as foreman of the paint shop?

A. I did.

Q. 16. Are you still foreman, and have you been ever since?

A. I am; and have been in the season when they work.

Q. 17. Has Mr. Rhodes visited you at the shops several times since he left?

A. I don't recollect how many times. Mr. Rhodes has been down there a few times since he left.

Q. 18. Was there a man by the name of Coulter working at the shop; if so, what did he do?

A. Yes, sir; he was a striper.

Q. 19. What is his Christian name, if you know?

A. His name is William.

Q. 20. Do you remember during the summer of 1879 of painting some of these planters with the hand lever, to be sent to the fall fairs of that year?

A. I remember of painting the planters, but the levers I don't remember of. The boys generally done that afterwards.

Q. 21. Do you remember that hand levers were on these fair planters?

A. I do not remember whether they were on or not at the time of the painting.

Q. 22. Then I understand that the planters are painted before the hand levers are put on. Is this correct?

A. It is.

Q. 23. Were there any boys at work during the summer when the shops were shut down, say during the month of July, 1879?

A. I couldn't say whether it was July or August that we painted them. Some seasons it was sooner and some seasons it was later.

443 Q. 24. It is usual, is it not, to finish planters for the fairs a little better than those for the trade, so far as ornamental painting is concerned?

A. Yes, sir.

Q. 25. Then, if the levers were striped during that year it would be done by Mr. Coulter if you didn't do it; is this correct?

A. It is.

Q. 26. Seeing, as you have stated, that the hand levers was not on the planters when they were painted, how do you know that the few planters painted while Mr. Rhodes was foreman had levers like "Exhibit Buckeye Planter?"

A. There was a planter in the office which had a lever on which had been painted, but it might have been painted before the lever was put on. I do not recollect of painting any planters with the levers on.

Q. 27. And you did not paint the levers?

A. I have painted a great many levers, but I don't know that I painted these for the fair at that time.

Q. 28. What enables you to state that you first saw the lever on a planter in January, 1878?

A. What makes me remember more particular is that it had a short pole—the pole sawed off, and it was got up, I suppose from that, to leave in the office for a time.

Q. 29. Didn't the company keep a planter in the office every season for the purpose of exhibiting it?

A. I don't remember of having seen a planter there since that year—since Rhodes left; I haven't seen any since that year; that was 1878.

Q. 30. How do you know it was 1878?

A. What makes me remember it so well I went away from here in 1876, in the summer, and that fall of 1876, the Centennial

444 year, Mr. Trader wrote to me to come back. Rhodes was hired as the foreman; he stayed here about eighteen months, or something near that, and when he left I took his place; that would bring it to January, 1878.

Q. 31. How does the fact of Mr. Rhodes being a workman there enable you to state the time you saw this planter any more than the fact that any other workman was there?

A. Because there hadn't been many of them built while Mr. Rhodes was there; they were built just as he left; his leaving caused me to remember.

Q. 32. Have you talked this matter over recently with Mr. Rhodes?
A. I have not.
Q. 33. Did you see him when he was here the other day?
A. I did.
Q. 34. Was there nothing said about it?
A. He said he was down here for something about the planter; I wasn't with him a minute.
Q. 35. Have Mr. C. W. Trader or Mr. Collier talked to you about it?
A. Mr. Trader called me in the office some time ago and asked me if I remembered anything about the hand lever in the year that they built them; I told him I did, and told him I didn't think there was many built after 1879.
Q. 36. Did Mr. Trader tell you when Mr. Rhodes quit?
A. Mr. Trader asked me if I remember when Mr. Rhodes quit; I told him I did; I told him of the circumstances of the time of Mr. Rhodes coming the Centennial year and his leaving me and taking his place is what made me remember it.
Q. 37. It would be necessary to shorten the tongue of any planter to set it up in the office, would it not?
A. It would.

SETH A. WHITE.

445 Also ROBERT CANNON, a witness, was produced on behalf of the defendant, and after being duly sworn, testified as follows:

Q. 1. State your name, age, residence, and occupation.
A. My name is Robert Cannon. I was 13 years old when the war broke out. Xenia, O., is my residence. I am a blacksmith.
Q. 2. What was you doing and where was you at work during the years 1877 and 1878?
A. I was working down here at the plow shop. I have been working there every year for about thirteen years. I mean the Shawnee Agricultural Co. I was helping in the blacksmith shop.
Q. I now show you a pattern marked "Defendant's Exhibit Lever Former," and ask you whether or not you know of any cast-iron former having been made from this pattern while you were at work for the Shawnee Agricultural Co.

Objection.—Objected to as irrelevant and immaterial.

A. Yes, sir; I am very well acquainted with the gentleman.
Q. 4. State, if you know, who made the casting from this pattern.
A. Yes, sir; it was Calvin Phebus.
Q. 5. What, if anything, did you have to do with the casting? State fully.

Objection.—Last objection repeated.

A. I took the casting out of the sand in the foundry. I was a half a day taking off the little bumps off them and around the outside and smoothing it up and dressing it out.

Q. 4. You may state, if you know, where the casting made from this pattern now is.

446 A. Yes, sir; it is laying down here in the Shawnee Agricultural Company's yard by the blacksmith shop. I saw it there last Thursday.

Q. 7. How many castings, to your knowledge, were made from this pattern?

Objection.—Objection repeated.

A. There was two.

Q. 8. How did the two castings differ, if at all?

A. The first one made was too narrow for the wrought iron we formed over it; then they put a strip on the out edge of the pattern about a quarter of an inch; then they took it back and cast another one off of it, and that is the one that is down there; the first one they melted over again.

Q. 9. You may state, if you know, what the casting which was made from this pattern was used for.

A. It was used for to bend these lever irons on for the planters.

Q. 10. I call your attention to Def't's "Exhibit Corn-Planter Lever," and ask you whether or not that represented the lever you refer to.

A. Yes, sir; it represents him very much—very much, sir.

Q. 11. State, if you know, who was the foreman of the foundry when the casting to which you refer was made.

Objection.—Objection repeated.

A. Calvin Phebus was the foreman.

Q. 12. You may state, if you know, if any levers similar to the "Exhibit Def't's Corn-Planter Lever" have been made in the Shawnee Agricultural shop prior to the making of the cast-iron former?

A. Yes, sir.

447 Q. 13. Who made that first one which was hammered out before the cast-iron former was made?

A. John Beachem and myself.

Cross-examination:

Q 14. Did you help Beachem to make some more levers along later in the year, after making the first one?

A. Yes, sir.

Q. 15. These were shaped by hand, were they not?

A. I believe they were.

Q. 16. Can you state the month? Was it along in July or August, or later?

A. I can't exactly remember the time—in just what season it was.

Q. 17. When do you think it was—your best recollection of it.

A. It seems to me like it was in the spring, it has been so long.

Q. 18. Did you assist Beachem in making any of these levers by hand for the fall fairs while the shops were shut down?

A. Yes, sir; I think I did at that time.

Q. 19. How long after this was it before you saw the cast-iron former—six months or a year?

A. Well, I'll tell you, I think it was along in the spring or fall; I can't exactly tell which, but I think it was the following season after we made those by hand.

his
ROBERT x CANNON.
mark.

448 Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MAN'F'G CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

Examination of witnesses on behalf of the defendant, under the 67th rule in equity, as amended, before Thos. B. Kyle, J. P., who is hereby agreed upon as special examiner under said rule, at Troy, O., this 11th day of August, 1884.

Present: Edward Boyd, Esq., for the complainant, and Edward Taggart and C. M. Peck, for the defendant.

By request of parties it is ordered that these depositions be taken by question and answer.

JOHN KELLY, a witness produced on the part of defendant, being first duly sworn, testified as follows:

Q. 1. What is your name, age, occupation, and place of residence.

A. John Kelly; I am 60 years of age; I reside in Troy, O.; I am engaged in the manufacturing trade; I am a member of the Beedle & Kelly Co.

Q. 2. Please look at patent No. 167,612, dated September 14th, 1875, granted to John Kelly for corn-planter, and state
449 whether you are the John Kelly to whom said patent was granted.

A. Yes, sir; I am.

Q. 3. What was your occupation in 1875 and up to the incorporation of the present Beedle & Kelly Co.?

A. I was a member of the firm of Beedle & Kelly.

Q. 4. If your firm made any corn-planters in all respects like the patent above referred to, when did it begin such manufacture, and about how many did it make and sell each year thereafter.

A. Well, it commenced in 1874:

In 1874 and '75 we sold	350
In 1875 and '76 we sold	823
In 1876 and '77 we sold	1,718
In 1877 and '78 we sold	2,154
In 1878 and '79 we sold	2,200

I have taken no account from the books, but think the average for the ensuing — would be from 2,000 to 2,500.

Q. 5. If you made any change in the construction of these machines, when was such change made, and can you produce a model of your machine illustrating such change?

A. I made a change in 1879; I have a model here.

Defendant's counsel offers said model in evidence, and has the same marked Defendant's Exhibit "Kelly Model," Thos. B. Kyle, J. P., August 11th, 1884."

To the introduction of which model counsel for complainant objects as being incompetent and irrelevant.

Q. 6. What was the change made in your former machines which is illustrated in this model?

450 A. It was a latch put on the foot lever, so as to lock it in the ground more readily.

Q. 7. To lock what in the ground?

A. In hard ground the runner part has not sufficient weight to plant it deep enough. Then we lock it in with that latch, in connection with the automatic hook and lever.

Q. 8. Was the lock between the latch and automatic hook effected before or after forcing the runners into the ground?

A. In order to use the latch we throw the latch around so that it will engage with the automatic hook; then we use the hand lever to force the runners into the ground.

Q. 9. Can you produce a machine made by your company before this latch was applied to your machine?

A. Yes.

Defendant's counsel offers said machine in evidence and has the same marked "Defendant's Exhibit Champion Planter," Thomas B. Kyle, J. P., Aug. 11, 1884.

Q. 10. To whom was this machine just offered sold, and when?

A. Sold in the spring of 1879 to Geo. Pearson, a farmer, living about a mile and a half southwest of Troy, O.

Q. 11. Were the other machines made and sold by your firm in 1875, '76, '77, and '78 in all respects like this "Exhibit Champion Planter" as to the construction and arrangement of the hand and foot levers and their connections?

A. Yes; with one little exception.

Q. 12. What is that exception?

A. The only change that was made was a notch on the front of the automatic hook. That notch was used for locking the
451 planter in the ground. After the first year or two that notch was taken off, because I found that the notch on the back side of the hook would answer just as well for locking in the ground.

Cross-examination:

X Q. 1. Did your company make another change for this season's planting?

A. Yes.

X Q. 2. Please describe that change.

Objected to by counsel for defendant as irrelevant.

A. The hand lever was made fast to the fulcrum shaft and used the section the same as this.

X Q. 3. Did you use the same kind of a foot lever?

Same objection.

A. We used a malleable iron one instead of wood.

X Q. 4. How did you use the automatic lock on the foot lever?

Same objection.

A. That was dispensed with on that planter for this year; we found it wasn't so good.

X Q. 5. With the exception of the difference in the material, was there any other difference in the foot levers?

Same objection.

A. There was a difference in the shape of it.

X Q. 6. Can you describe this difference?

Same objection.

A. The pattern was gotten up to combine lightness and strength, and it required a different-shaped lever from the wooden one.

452 X Q. 7. Look at the model which I now — you and state whether it correctly represents the hand and foot levers as arranged on the planters for the present season.

Same objection and as being incompetent, not being a proper cross-examination.

A. Yes; about the thing.

Counsel for complainant here offers said model in evidence, to be marked "Complainant's Exhibit Model of Beedle & Kelly's 1884 Planter."

Same objection to introduction of model as above.

X Q. 8. Does the frame-work of the model also correctly represent the planters upon which the levers there shown were placed?

Same objection.

A. It represents it in appearance, I think.

(Signed) JOHN KELLY.

Counsel for defendant states that the Exhibit Champion Planter had not been brought in from the country at the time he offered it in evidence, and that since the signing of John Kelly's deposition he has noticed that the point of the lower catch of the automatic hook has been broken off. He therefore recalls John Kelly as a witness to offer in evidence a substitute automatic hook which is not broken.

Counsel for complainant objects to the substitution of the hook or any other part of the exhibit.

JOHN KELLY recalled.

Re-examination:

453 Q. 1. If you can produce a counterpart (unbroken) of the automatic hook on the Exhibit "Champion Planter" will you please do so?

A. Here is one.

Counsel for defendant offers the same in evidence and has it marked Defendant's Exhibit "Automatic Hook," Thos. B. Kyle, J. P., August 11th, 1884.

(Signed) JOHN KELLY.

454 Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MAN'F'G CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

Examination of witnesses on behalf of the defendant under the 67th rule in equity, as amended, before Quincy Corwin, notary public, who is hereby agreed upon as special examiner under said rule, at Dayton, Ohio, this 12th day of August, 1884.

Present: Edward Boyd, for the complainant, and C. M. Peck and Edward Taggart, for the defendant.

By request of parties it is ordered that these depositions be taken by question and answer.

ORION DODDS, a witness produced on behalf of the defendant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by C. M. PECK, of counsel for defendant, as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is Orion Dodds; age, 34 years; residence, Dayton, Ohio, and occupation, superintendent of John Dodds' rake works.

Q. 2. How long have you been connected with John Dodds' works?

A. Eleven years.

Q. 3. If any corn-planters were made at said Dodds' shops,
455 when were said planters made and under what circumstances?

A. John Dodds made corn-planters for Wright & Eckers in the fall of 1877 and spring of 1878.

Q. 4. State if he made any at any other time and how these planters were known or called.

A. They were called the Wright planter. He made none at any other time.

Q. 5. Have you examined the corn-planter marked Exhibit "Wright's Machine, Jas. V. Bonnell, notary public, Butler Co., O., April 17, 1884?" And, if so, please state, if you know, by whom said planter was made.

Objection by counsel for complainant, because no such planter is present nor has any such been offered as an exhibit in this case.

A. I examined the planter this morning, at the Short Line freight depot, marked "Wright's Exhibit," that John Dodds manufactured.

Counsel for defendant states that this is the exhibit marked as indicated in the previous question and which has been before the court already in this cause, and he hereby formally offers the same in evidence; that complainant's counsel has free access to the machine, which is too heavy and cumbersome to be brought to the place where these depositions are being taken, and he requests the officer to further identify the machine by marking it Def't's Exhibit "Wright's Planter, Quincy Corwin, notary public, Aug. 12, 1884."

Complainant's counsel objects to the offering of said exhibit in this way and the marking of it.

Q. 6. About how many planters were made by John Dodds for the season of 1878?

A. From 800 to 1,000.

456 Q. 7. Is the planter, Exhibit "Wright's Planter," now in all respects of its construction the same as when it was made?

A. All except the scraper rod is on top of the frame instead of underneath.

Cross-examination by EDWARD BOYD, counsel for complainant:

X Q. 8. Were all the planters made by John Dodds like this one?

A. No, sir; from 100 to 150 were like this one.

X Q. 9. How were the first ones made?

A. I don't know how to describe that. The Wright exhibit hinged in the center; the others hinged at either end.

X Q. 10. Was this the only difference between the planters?

A. I think it was. I couldn't state positively without seeing one of the others.

X Q. 11. Were all these planters delivered to Wright & Eckert?

A. No, sir; we sold some of them.

X Q. 12. What year or years did you deliver them to Wright & Eckert?

A. The years 1877 and 1878; and then they could not sell them, and a great many of them came back, and we sold them to our agents after 1878.

X Q. 13. Are you certain that you didn't deliver to Wright & Eckert for the year 1879?

A. I was not at home the year 1879, and don't know to whom they were delivered.

Defendant's counsel states that before X Q. 10 was put the Exhibit Wright Planter offered in the direct examination was brought
457 and set up for the inspection of complainant's counsel, and now is in the hall outside of the examiner's office.

X Q. 14. Were you at home during 1880?

A. Yes, sir.

X Q. 15. Were some of these planters sold that year?

A. I think there were a few sold that had been returned.

X Q. 16. Were others sold in 1881 and 1882?

A. I don't think that there were any left at all after 1880.

X Q. 17. As this planter was first made was not a chain used for connecting the hand lever to the front frame?

A. I can't recollect now how the first ones were made about that connection.

X Q. 18. Were directions for setting up the planter sent with each; if so, in what way?

A. Directions were sent out to the men who were putting up the planters. They were told to put them on. I don't know whether they put them on all of them or not.

X Q. 19. Were these directions printed?

A. Yes, sir.

X Q. 20. Was it usual to paste or tack them on the under side of one of the hopper covers?

A. Yes, sir.

X Q. 21. Did you have more than one form of directions printed?

A. I did not have them printed, never read them, and don't know how many different forms there might have been.

X Q. 22. Who did have them printed?

A. I don't know.

X Q. 23. Do you find any such direction on "Exhibit Wright's Planter;" and, if not, do you observe any indications of such having been there?

458 A. I find two directions on the Wright planter—one under each hopper board.

X Q. 24. Are the hopper boards which I now hold the ones you refer to?

A. Yes, sir.

Counsel for complainant requests the examiner to identify these hopper boards as "Hopper Covers, Exhibit Wright's Planter," and the examiner has done so.

ORION DODDS.

Also JOHN B. LOUGH, called as a witness on behalf of defendant, being duly sworn, deposes and says:

Questioned by C. M. PECK, counsel for defendant:

Q. 1. State your name, age, residence, and occupation.

A. My name is John B. Lough; age, 43 years; residence, Fairfield, Greene county, O.; occupation, traveler for Beadle & Kelly Company, of Troy, O.

Q. 2. What was your occupation and where were you at work in the year 1878?

A. I was traveling for the Shawnee Agricultural Co., of Xenia, O., selling corn-planters and sulky rakes.

Q. 3. Have you seen the corn-planter marked "Defendant's Exhibit Buckeye Planter," offered in evidence before W. F. Trader, notary public, about the 5th of the present month, at Xenia, O.?

A. I have.

Q. 4. State whether or not you had anything to do with a corn-planter having the hand and foot levers similar to the Defendant's Exhibit Buckeye Planter while you were in the employ of the said Shawnee Co.

A. Yes, sir; I did have.

459 Q. 5. You may state fully what you had to do with them, giving the dates as nearly as you can recollect them.

A. The first time I saw the planter was in the late summer or early fall, in the shop of the Shawnee Agricultural Company. The next place I saw the planter was in a field trial or test of the said Buckeye planter on Wm. Galloway's farm, near Xenia, Ohio, in the month of August, I think, in 1878. We went there to test the power of the hand and foot lever and chain drill attachment. We planted corn in a field on Galloway's farm. The ground was fallow—fallow ground for wheat. It being rough and hard, we wanted to see whether the lever was sufficiently strong to force the front runners into hard ground, and it gave entire satisfaction to the men that were present.

Q. 6. You may state who was present at the trial on the Galloway farm.

A. Mr. Chas. Trader, Mr. S. R. Collier, and myself and the drayman.

Q. 7. According to your best recollection, did you sell, during the year 1878, any corn-planter having the hand and foot lever similar to Defendant's Exhibit Buckeye Machine?

A. No, sir; I did not.

Q. 8. You may state if you know why you did not.

A. The reason why we didn't sell any in the spring was we didn't have any that I know of for the spring trade of 1878, and in the fall they had a great many planters returned, and they wanted to dispose of those planters without putting any more actual expense on them. They proposed to hold the lever planter until they disposed of the old stock.

Cross-examination by E. BOYD:

X Q. 9. How far is Fairfield from Xenia by a driving road?

A. Eleven miles and a fraction.

460 X Q. 10. Were you frequently about the works of the Shawnee Agricultural Co. before you went into its employ?

A. No, sir; I was not.

X Q. 11. Had you been in there at all?

A. Yes, sir.

X Q. 12. How often?

A. Well, I don't know that I could just give the number of times.

X Q. 13. State about how often.

A. Probably once or twice during the years of 1876–1877.

X Q. 14. For whom did you work immediately before going into the employ of the Shawnee Agricultural Co.?

A. I had worked for Wm. T. Carey, of Xenia, O., and W. H. Langhead, of Xenia, O.

X Q. 15. When did you work for each of these, respectively?

A. I worked for W. T. Carey in 1875, 1876, and in 1877 up to the latter part or probably middle of September. I was selling Champion reapers, plows, corn-planters, and sulky rakes, a general line of agricultural implements. I was with Mr. Langhead a part of October and November, 1877, selling a patent feed-cutter in Kentucky.

X Q. 16. Did you spend several days last week in Xenia?

A. I spent two days in Xenia; part of two days.

X Q. 17. Did you visit the Shawnee Agricultural Co.'s works?

A. Yes, sir.

X Q. 18. Have you visited these works every year since you left their employ?

A. I believe I have; yes, sir.

X Q. 19. Did you ever exhibit a planter for the Shawnee Agricultural Co. at a fair before going into their employ; and, if so, when and where?

A. Yes, sir; I did. I exhibited it at the Sabina fair in
461 August, 1877, I believe, and at Hillsboro', Highland Co., O., at the county fair, the latter part of September or 1st of October of the same years.

X Q. 20. What was the character of the feeder or drop on that planter; was it a rotary or a slide?

A. Slide, as near as I can recollect—what you call a slide feeder.

X Q. 21. Did the Shawnee Agricultural Co. make planters that year with any other than a slide feeder?

A. Not that I know of—that is, in 1877.

X Q. 22. Were you at that time taking orders for the following season's trade?

Objected to as incompetent and indefinite, not pointing out the time and date referred to.

A. No, sir; I was not.

X Q. 23. You were not taking orders at all, were you?

A. No, sir; I was just asked by Mr. Trader to accommodate them by showing their planters at these two fairs. They did not have a man at the time that they could send there.

X Q. 24. When did you go into the employ of the Shawnee Agricultural Co., and in what capacity?

A. I went into their regular employ about the 1st of December, 1877, as traveling salesman for them on the road, selling corn-planters and sulky rakes.

X Q. 25. What class of feed was on the planters at the time you commenced this work?

A. We had both the slide and rotary. The slide planter was the planter we were trying to sell the most of. The rotary we didn't sell *it* unless it was the last resort. The slide planter was better known, and in many localities was the leading planter. Where the rotary had been introduced and given satisfaction and we couldn't sell slide planters *and* we held the rotary back for that class of trade.

462 X Q. 26. Had the Shawnee Agricultural Co. introduced any rotarys prior to that time which gave satisfaction?

A. No, sir; not that I know of.

X Q. 27. About how many rotarys were sold for the season of 1878?

A. I couldn't say.

X Q. 28. What is your best recollection of it?

A. My best recollection is between 150 and 200.

X Q. 29. About how many slides were sold the same season?

A. I have no idea how many were sold.

X Q. 30. How many rotarys did you sell?

A. I couldn't tell until I figured awhile on that, and then I might not give a definite amount.

X Q. 31. Well, figure and give the best answer you can.

A. I just have a few dealers that I think of that will figure up about 100 outside of some small orders.

X Q. 32. Who are these dealers and where do they live?

A. Farquhar & Sparks, Wilmington, O.; Glasscock & Quinn, Hillsboro', O.; Chas. Woodrow, Columbus, O.; and a man at Bellefontaine, whose name I don't just now think of; his name, the one at Bellefontaine, is Mr. Jas. Lockhart. I can't think of the gentleman's name at Louisville, Indiana. There is another gentleman at Anderson, Ind., another at Peru, Ind., and some other places that I can't just think of now.

X Q. 33. Did you exhibit planters for the Shawnee Agricultural Company at the fall fairs of 1878?

A. Yes, sir; I did.

X Q. 34. Were these slides or rotarys?

A. They were rotarys.

X Q. 35. Did you make sales of rotarys during that fall and following winter for the season of 1879?

463 A. I don't remember that I did; I was collecting and settling up and clearing up the failure of the working of the planters that year.

X Q. 36. Who did make the sales of that fall and following winter, if any one?

A. To the best of my knowledge Wm. Fry, of Urbana, Ohio—that is his residence—now employed by Evans & Foos, of Springfield, O.

X Q. 37. Can you describe the rotary drop and the way in which it was driven, which you say was a failure in 1878?

Question objected to as incompetent, assuming a fact which has not been proven and a statement of fact which has not been made by the witness.

A. I can; yes, sir; the rotary plate has on the bottom lugs or posts, commonly called, and was driven by a drive ring with a dart movement, as I would call it and as we call it there in the shop.

X Q. 38. These lugs were cast on the under side of the dropper plate, were they not?

A. Yes, sir.

X Q. 39. Were all the rotarys of which you have any knowledge of having been sold in 1878 constructed in that way?

A. Yes, sir; that is the Buckeye planter, sold by the Shawnee Co.

X Q. 40. All the rotary planters which were put out by the Shawnee Agricultural Co. for the season of 1878 had the dropper plates constructed in this manner, had they not?

A. As far as I know; yes, sir.

X Q. 41. If any had been constructed in a different manner for that season you would have known it, would you not?

A. I don't know that I would; sometimes the manufacturers make changes and don't advise their traveling men of the fact.

464 X Q. 42. Traveling men would discover such a change if made, would they not?

A. That is owing to circumstances. Sometimes changes are made and put out in different territory and all the traveling men representing the firm don't get to see them.

X Q. 43. How long were you around the shops of the Shawnee Agricultural Co. when you first went into their employ? I mean before first going out on the road.

A. I was there a couple of days.

X Q. 44. During that time did you become familiar with what you were to sell?

A. Well, with what little experience that I had had handling the planter at the fair I became familiar with the slide planter, and the rotary we were not so familiar with.

X Q. 45. You became familiar enough with it to give us a description of it and to sell about 100; did you, prior to, say, the first day of June, 1878, frequently visit the works?

A. Yes, sir; by handling the model and visiting the shops I became familiar enough with it to have a very nice trade.

X Q. 46. Did you at any time prior to June 1st, 1878, while in the employ of the company, see a rotary drop on a planter constructed in any other way than that you have described?

A. No, sir.

X Q. 47. Were these planters which were put out in 1878 successful?

A. No, sir; they were not.

X Q. 48. Does that answer apply to both classes—that is, the slide and the rotary?

A. More particularly to the rotary.

X Q. 49. Did the planter which you exhibited at the fall fairs of 1878 represent the kind which the company was constructing or intending to construct for the following season's trade?

A. So far as I know, my understanding was that they were

465 not going to make any new planters until they got rid of the old ones that were returned—that had been returned in 1878.

X Q. 50. Did the planters which you exhibited in the fall of 1878 contain hand levers like that in Exhibit "Buckeye Planter?"

A. I can't satisfy my mind on that.

X Q. 51. What fairs did you exhibit at that fall?

A. I exhibited at the Ohio State fair at Columbus and the Indiana State fair at Indianapolis.

X Q. 52. Who was the teamster that drove you out to Galloway's farm at the time that you tested the planter? I mean the drayman or teamster.

A. I have forgotten his name.

X Q. 53. Was it Jordan Robb, a man in the employ of the Shawnee Agricultural Co. as drayman and general laborer?

A. Well, sir, I can't recall the gentleman's name to my mind.

X Q. 54. You have stated that during the year 1878 you did not sell any planters having the hand and foot levers similar to the Defendant's Exhibit Buckeye Machine. Have you any knowledge of any such planter having been sold that year by any person?

A. I have not.

X Q. 55. About the time or soon after you first saw a foot and hand lever like Exhibit Buckeye Planter did you see a model of the same?

A. No, sir; I did not. I didn't see a model with a hand lever.

X Q. 56. While you were in the employ of the Shawnee Agricultural Co. did you ever see such a model?

A. No, sir; I did not.

466 X Q. 57. Where did you go to work after leaving the Shawnee Agricultural Co.?

A. I went to work for Beadle & Kelly, of Troy, O.

X Q. 58. Did you go to work for them immediately after leaving said company?

A. In a couple of days after I left there.

X Q. 59. Are you acquainted with David Mulholland, who formerly traveled for Beadle & Kelly?

A. Yes, sir; I am; he was there at the time that I was there.

X Q. 60. How long did he remain after you went there?

A. He left there in the fall; just a short time before the fairs.

X Q. 61. When did you go there?

A. I went to Beadle & Kelly's December, 1878.

X Q. 62. What enables you to fix this date?

A. Beadle & Kelly's books and my traveling expense account.

X Q. 63. Have you any other reason?

A. Yes, sir; the Shawnee Agricultural Co.'s books show that I left their employ at that time, and the books of both firms correspond with the time of my leaving the Shawnee Agricultural Co. and commencing with Beadle & Kelly.

X Q. 64. Have you now given all your reasons?

A. I believe I have.

Counsel for complainant object to answers 61 and 63 as incompetent.

X Q. 65. Did you use a model in traveling in the fall of 1878?

Question objected to as incompetent, for the reason that this is no proof that this witness traveled in the fall of 1873.

467 A. I don't remember; I used one in the spring.

J. B. LOUGH.

Also DAVID WILSON BANKER, called as a witness for defendant, being duly sworn, deposes and says:

Questions by C. M. PECK, counsel for defendant:

Q. 1. State your name, age, residence, and occupation.

A. My name is David Wilson Banker; age, 63 years; residence, Madison township, Butler county, Ohio; occupation, farmer.

Q. 2. Please look at Defendant's Exhibit "Wright's Planter" and state if you ever saw it before and to whom it belonged.

A. The machine belonged to me before they got it.

Q. 3. When and of whom did you buy that machine?

A. I bought it of Newton Long; he was a salesman for Fred. Kennel; I bought it in 1879; I suppose in April, for I commenced to plant corn in May.

Q. 4. Has that machine been in your possession since the spring of 1879 up to this last spring?

A. Yes, sir.

Q. 5. Is it now in all respects of its construction the same as when you bought it?

A. All except the scrapers, which I changed from the top of the frame to the bottom, and I lengthened the connecting rod to make it run deeper by welding a piece on it; I had the shoes or runners laid on by a blacksmith.

Q. 6. Do I understand, then, that these are the only changes in the planter after you bought it?

A. That is all.

468 Q. 7. What is the part that you called just now the connecting rod—what does it connect?

A. It connects the hand lever with the frame that raises the shoes out of the ground.

Q. 8. Was there such a connecting rod on the machine when you originally bought it?

A. Yes, sir.

Q. 9. Do I understand that all you have done to that connecting rod is to lengthen it?

Objected to as leading and immaterial.

A. Yes, sir.

Q. 10. How do you fix the time as the spring of 1879 that you bought this planter?

A. Well, I bought a farm the same year and my son moved on it and he planted his corn with it.

Cross-examination by E. BOYD, counsel for complainant:

X Q. 11. Was there a seat on the planter when you parted with it?

A. Yes, sir.

X Q. 12. When did you lengthen that connecting rod?

A. I think the first year that I bought it; the ground was dry and it didn't plant it deep enough to suit me.

X Q. 13. Did you have a new rod made?

A. No, sir; I put a piece on it.

X Q. 14. Who pieced it?

A. A blacksmith; Wood was his name; there were two of them, Jas. and Arthur Wood, together at Poast Town.

X Q. 15. As the planter was when you got it you couldn't press it into the ground with the hand lever, could you?

A. Yes, sir; if the ground wasn't very hard you could; if the ground was very hard you couldn't, no way; I couldn't force
469 it in in places quite as deep as I wanted it, and for that reason put that on.

X Q. 16. In what hole of the rod does the connection require to be made in order to press it into hard ground?

A: We generally used the full length of the rod, but sometimes left a hole or two above the lock lever.

X Q. 17. From whom did you buy the farm that you have mentioned?

A. From Joel Lucas.

X Q. 18. What month?

A. About the last of March, I think.

X Q. 19. Describe the number of that lot and the location of the farm generally.

A. Well, it is a 100-acre farm, that lays almost wholly in the northeast corner of the county, Butler Co., O., in Madison township, and right on the Warren Co. line and near the Montgomery Co. line.

X Q. 20. Was the deed made from Lucas to you?

A. It was made from Lucas to my wife, Julia A. Banker.

X Q. 21. Are you certain that you lengthened the connecting rod by welding a piece on it?

A. Yes, sir; I took it to the shop and had it done myself.

D. W. BANKER.

Also NEWTON LONG, called as a witness in behalf of defendant, being duly sworn, deposes and says:

By C. M. PECK, counsel for defendant:

Q. 1. State your name, age, residence, and occupation.

A. My name is Newton Long; age, 46 years; residence, Middletown, Butler county, Ohio, and occupation, seller of agricultural implements.

470 Q. 2. Where were you and what was your occupation in the latter part of 1878 and the fore part of 1879?

A. I was at Middletown; selling implements—selling implements for Kennel & Long.

Q. 3. Did you ever sell a corn-planter to Mr. David Wilson Banker, a farmer near Poast Town, in your county; and, if so, when?

A. Yes, sir; in 1879—in the spring of 1879.

Q. 4. Did you ever sell any other planter than this one at any other time to Mr. Banker?

A. No, sir.

Q. 5. Please look at this Exhibit "Wright Planter" and state if you have ever seen it before and what you know about it.

A. That looks like the planter I sold to Mr. Banker.

Q. 6. Can you say positively whether or not that is the planter?

A. Yes sir; it is.

Q. 7. How was the hand lever connected to the front frame at the time you sold that planter to Mr. Banker in the spring of 1879?

A. Just as the one in the room, meaning the one I just looked at—the Exhibit "Wright Planter."

Cross-examination by E. BOYD, counsel for complainant:

X Q. 8. Was Mr. Frederick A. Kennel a member of the firm of Kennel & Long?

A. Yes, sir.

X Q. 9. Did Kennel & Long sell other Wright planters in the spring of 1879?

A. No, sir; I think not.

X Q. 10. Did they sell any other at any time; and, if so, when?

A. Yes, sir; in 1878 they sold the Wright planter.

471 X Q. 11. Then the exhibit is the only one they sold after 1878?

A. Yes, sir.

X Q. 12. What enables you to state that you sold the Banker planter in the spring of 1879?

A. It was the second year I worked for them.

X Q. 13. Am I to understand that you are not the Mr. Long of the firm of Kennel & Long?

A. I was not a member of the firm.

X Q. 14. When did you first commence working for Kennel & Long?

A. In the spring of 1878.

X Q. 15. How do you know it was the spring of 1878?

A. Because my books show it.

X Q. 16. Have you your books here?

A. No, sir.

X Q. 17. Have you any other reason?

A. My recollection is all.

X Q. 18. What enables you to recollect that year?

A. I had been working in that business six years.

X Q. 19. How does the fact that you had been working six years in the business aid you in arriving at 1878 as the time when you commenced for Kennel & Long?

A. I worked two years for Kennel & Long, three for Wilson Long, one year for C. Aultman & Co., one for Kennel & Oxberger.

X Q. 20. You mean that you have worked the years named since commencing for Kennel & Long?

A. No, sir; I worked a part of a year for C. Aultman & Co.

X Q. 21. Do you mean that you worked these years and a part of a year since commencing with Kennel & Long?

A. No, sir; I worked some before I commenced with Kennel & Long.

X Q. 22. Well, then, what do you mean by these different terms of service, and which, if any of them, are since you com-
472 menced with Kennel & Long?

A. I worked for all the others since I commenced with Kennel & Long.

Redirect examination by C. M. PECK, counsel for defendant:

X Q. 23. Of whom did Kennel & Long get the corn-planter which you sold to Mr. Banker?

A. I couldn't say.

NEWTON LONG.

Adjourned, at 6 p. m., to August 13th, 1884, 9 a. m., at the office of said Quincy Corwin, notary public and special examiner, in Dayton, Ohio.

AUGUST 13, 1884—9 a. m.

Taking of testimony resumed pursuant to adjournment.

Present: Edward Boyd, counsel for complainant, and C. M. Peck, counsel for defendant.

EDWARD BRENNEMAN, called as a witness for defendant, being duly sworn, deposes and says:

Questions by C. M. PECK, counsel for defendant:

Q. 1. State your name, age, residence, and occupation.

A. My name is Edward Brenneman; age, 46 years; residence, Dayton, Ohio; occupation, that of manufacturer of agricultural implements, being one of the firm of D. E. McSherry & Co., of Dayton, Ohio.

Q. 2. If your firm made any double or two-horse corn-planters please state when they were made, about how many were made, and what they were called.

473 A. We made some for Wright & Eckert—about 200 of them. They were called the Wright planter. We built them on contract for Wright & Eckert during the winter of 1876 and the spring of 1877.

Q. 3. Please look at the corn-planter in the hall and state whether or not it is one of the planters manufactured by your firm in the winter of 1876–'7 for Wright & Eckert as aforesaid.

A. To the best of my knowledge and belief, that is one of them.

Q. 4. Please look at the directions on hopper cover of Exhibit "Wright's Planter" and state whether your firm had such directions printed for the planters inquired about.

A. Those are the directions, but whether we had them printed or Mr. Eckert furnished them I cannot say.

Counsel for defendant offers the planter identified by the witness in evidence, and has the same marked Exhibit "McSherry Wright's Planter."

EDWARD BRENNEMAN.

Also SAMUEL S. BANKER, called as a witness for defendant, being duly sworn, deposes and says:

Questions by C. M. PECK, counsel for defendant:

Q. 1. State your name, age, residence, and occupation.

A. My name is Samuel L. Banker; age, 35 years; residence, Butler Co., O., Madison township; occupation, farmer.

Q. 2. Please look at corn-planter, Exhibit "Wright Planter," and state if you have ever seen it before or what you know about it.

A. Yes, sir; I think I have seen it. I used it for planting my corn; it belonged to my father. In the years 1879, 1880,
474 1881, 1882, and 1883 I planted my crops with it. My father's name is D. W. Banker.

Q. 3. How are you enabled to fix the time as 1879 that you first used this planter?

A. I moved on the farm where I now live in the spring of 1879, and have planted all the corn on it since I moved there with the planter and never used one before. This year I used another planter.

Q. 4. In what month of the year 1879 did you first use this planter?

A. May.

Q. 5. Do you know of any changes having been made in that Wright planter after it was bought by your father; if so, what were those changes and when were they made?

A. Yes, sir; we had the link connecting the lock lever with the runners lengthened and we had a staple made—a full staple instead of a half—that connects the link with the runners; we also had the runners laid. We had the link lengthened the first year we used the planter, and I cannot say positively what year the runners were laid, but it was after they were worn out.

Q. 6. Why did you have the link lengthened?

A. Our ground was very dry and we wanted to plant our corn deep.

Q. 7. Was the planter used for any of the spring's planting of 1879 after that link was lengthened?

A. Yes, sir.

Q. 8. Is that lengthened link to which you refer now on the machine?

A. Yes, sir.

Q. 9. Describe how you operated the machine to regulate the depth in planting in 1879.

A. We used it locked down to the complete depth, and in very hard places we used our feet on the foot rests.

475 Q. 10. How would you get it down in order to lock it?

A. By throwing our weight on the foot rests and starting the team and giving both drivers and droppers weights to the runners.

Q. 11. In doing this would you make any use of the hand lever?

Objected to as improper in form, the witness having described the operation fully.

A. Yes, sir; push it with my hand while pressing with my foot?

Q. 12. Who owned the farm on which you moved in the spring of 1879?

A. My mother, Julia A. Banker.

Q. 13. Of whom and when was this farm bought?

A. Of Joel Lucas, in the spring of 1879—in the latter part of February, I think.

Q. 14. Can you produce the deed of this farm from Lucas to your mother?

A. Yes, sir; here it is, sir.

Q. 15. Is this the original deed of the farm or a copy?

A. I suppose it is original.

Def't's counsel tendered said deed to plaintiff's counsel and asks the officer to certify that the deed was executed on the 27th day of February, 1879, before L. D. Doty, notary public, whose notary's seal appears on the same.

Counsel for complainant objects to the competency of the certificate asked.

Quincy Corwin, the said notary public and special examiner before whom this testimony is being taken, hereby certifies that he has examined the said deed in the hands of the witness and finds that the same is dated Feb. 27, 1879, and that the certificate of L. D. Doty, notary public, before whom the same was acknowledged, bears

476 date Feb. 27, 1879, and that the official seal of said notary appears thereon.

QUINCY CORWIN,
Notary Public.

Q. 16. When did you move onto this farm?

A. About the 20th day of March, 1879.

Cross-examination by EDWARD BOYD, counsel for complainant:

X Q. 17. Who lived on the farm before you moved there?

A. Joel Lucas.

X Q. 18. Where did you live before moving there?

A. At my father's house, on the farm he now lives on, in the same township.

X Q. 19. Did your father ever live on the farm you are on?

A. No, sir.

X 20. In describing the changes made on the planter you said that you had the staple made a full staple instead of a half that connects the link with the runners; does this half staple open on one side above the cross-pieces into which it was secured, so that the connection between it and the lever could be readily taken off?

A. No, sir; it came down to the cross-pieces with the short arm of the staple, while the other arm went through and was secured by a nut.

X Q. 21. Why did you have the change made?

A. Because we broke the staple and thought it would be stronger with two burrs on it.

X Q. 22. When did this breakage occur?

A. I can't say positively whether it was the first or second year we used the planter.

477 X Q. 23. Who repaired it?

A. The Woods Brothers, blacksmiths of Poast Town.

X Q. 24. Was the bar lengthened at the same time?

A. I think not.

X Q. 25. Have you such a recollection of it as to enable you to speak positively?

A. Yes, sir; I have; it was not; it might have been made the same year but not the same day.

X Q. 26. What enables you to arrive at this conclusion?

A. The link was lengthened shortly after we began using the planter, and I distinctly remember using the planter with the staple weakened (light or twisted) after the link was lengthened.

X Q. 27. How much was the link lengthened?

A. I don't know that exactly; I could show you on the link; probably an inch and one-half.

X Q. 28. Have you described all the changes which were made in the planter?

A. I think so; on the planter proper; we made some little changes on the marker.

X Q. 29. Did you at any time get any repairs from the shop or dealers?

A. Yes, sir.

X Q. 30. What did you get?

A. A seat for the dropper; I will look at the planter before answering—that is correct; the casting for the dropping hand lever to engage in was broken.

X Q. 31. From whom did you get this?

A. I can't say positively who were in the firm at that time; I think the firm name was Kennel & Long, of Madison City, Madison township, Butler Co., O., the C. H. D. R. R. station for Middletown.

X Q. 32. When?

A. I can't say positively as to that either.

478 X Q. 33. Did you get any other repairs?

A. I think not; not that I remember of.

SAMUEL L. BANKER.

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MAN'F'G CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

Testimony taken on the part of the defendant in the above cause before J. Guilford White, notary public, Clarke county, Ohio, at Springfield, Ohio, on the 14th day of August, 1884.

Present: Edward Boyd Esq., for complainant, and Edward Taggart and C. M. Peck, Esqrs., for defendant.

WILLIAM SHAFER, a witness produced on the part of defendant, being duly sworn, says:

Q. 1. State your name, age, residence, and occupation.

A. William Shafer; age, 25 years; I reside in Fayette county, Ohio; my occupation is working on a farm.

Q. 2. What were you doing in 1879?

A. I was working for Robert Vincent, in Marion township, Fayette county, Ohio.

Q. 3. How long did you work for Mr. Vincent?

A. From March 3d to December 1st, 1879.

479 Q. 4. Have you ever worked for Mr. Vincent since then?

A. No, sir.

Q. 5. How are you enabled to fix 1879 as the time that you worked for Mr. Vincent?

A. By my book account that I kept with him.

Answer objected to as incompetent.

Q. 6. Have you any other means of fixing the time besides your book account?

A. Yes, sir; I have a son that was born in 1880, the next year after I left Robert Vincent.

Q. 7. Have you your book account with you? If so, please produce it.

A. Yes, sir; here it is. (Witness produces book account.)

Defendant's counsel offers said book in evidence as "Exhibit Shafer-Vincent Account."

Objection repeated.

Q. 8. During the time you worked for Mr. Vincent did you use a corn-planter for planting corn?

Objected to for want of notice in the answer.

A. Yes, sir.

Q. 9. Please look at "Exhibit Improved Buckeye Machine" and state where, if ever, you saw a machine with hand and foot levers constructed and arranged as in this exhibit.

A. Well, I saw one and used it at Robert Vincent's in 1879.

Q. 10. What time in 1879, and to whom did this planter belong?

A. We used it in the month of May, and it belonged to Robert Vincent.

Q. 11. What use did you make of the hand and foot levers in that machine—that is, how did you use them, and for what purpose?

A. Well, in turning around at the end we used them to raise the runners, and then we lowered them when we got turned around and put them in the ground.

480 Q. 12. How did you put them into the ground?

A. By taking hold of the hand lever and pushing it forward.

Q. 13. In pushing the hand lever forward did you ever use any other force than your hand; if so, what did you do?

A. I put my foot against it and pressed it forward.

Q. 14. Did you do this while you had hold of the hand lever?

A. Not always; in driving along, when I came to hard places in the ground, I just put my foot against it and pressed it forward.

Q. 15. Did you sometimes press it with your foot while you had hold of it?

A. Yes, sir.

Q. 16. Can you state about how many acres you planted with this planter in the spring of 1879?

A. Something near 90 acres.

Q. 17. Did Mr. Vincent have any other corn-planter while you were there?

A. No, sir.

Cross-examination by Mr. BOYD:

X Q. 1. Did Mr. Vincent keep a store?

A. No, sir; there may be some accounts in there, in that book account of mine with Vincent, which does not concern our dealings.

X Q. 2. Where did you work in 1880?

A. I worked for the widow Lloyd.

X Q. 3. When did you commence and how long did you work for her and where did she live?

A. I commenced working for her in December, 1879; I worked for her until December, 1880. She lived in Marion township, Fayette Co., Ohio, and I worked for her there.

481 X Q. 4. How close is her place to Mr. Vincent's?

A. It is an adjoining farm.

X Q. 5. During that year were you sometimes on Mr. Vincent's farm?

A. No, sir.

X Q. 6. You were never at Vincent's after leaving him?

A. O, I probably passed through the farm; I never labored for him.

X Q. 7. Do you mean that you may have passed through the farm while working for Mrs. Loyd?

A. Yes, sir; if the Vincent farm is what you want to know.

X Q. 8. Did a part of the Vincent corn land adjoin the Lloyd farm?

A. Yes, sir.

X Q. 9. Where did you work in 1878?

A. For Jonathan Chaffin.

X Q. 10. Where is his place on which you worked?

A. In Marion township, Fayette county, Ohio.

X Q. 11. How near to Vincent's?

A. I suppose it was about a mile and a half, as near as I can get at it.

X Q. 12. Were you familiar with the Vincent farm during that year?

A. Why, I knew where it was and who lived on it, and knew him; that was all.

X Q. 13. About how many acres of corn did he raise that year?

A. What year?

X Q. 14. 1878.

A. I don't know how much corn.

X Q. 15. I didn't ask you how much corn, but about how many acres?

A. I don't know how many acres.

X Q. 16. Did you see his corn field or fields that year?

A. I have passed along the road by them.

482 X Q. 17. Can't you estimate about how many acres?

A. I never took no particular notice. I don't know that I can.

X Q. 18. About how many acres of corn did he raise in 1880?

A. I don't know.

X Q. 19. Can you state whether it was more or less than he planted in 1879?

A. I cannot.

X Q. 20. Did you see the planting of any of Vincent's corn in 1878?

A. No, sir; I did not.

X Q. 21. Did you see a corn-planter on Vincent's place in 1878?

A. No, sir; I did not.

X Q. 22. Who besides yourself worked on Vincent's place in 1879 while you were there?

A. A man by the name of Joseph Cogan.

X Q. 23. Where is Cogan, if you know?

A. I do not know where he is at.

X Q. 24. You are certain that no one else worked there during that year except Cogan?

A. Not while I was there.

X Q. 25. Did you know John Nelson?

A. Yes, sir.

X Q. 26. Did he work there?

A. Not when I did.

X Q. 27. Did he at any time that you know of?

A. I believe he worked there the next year after I was there.

X Q. 28. Did you see him operating the planter during that next year?

A. No, sir; I did not.

X Q. 29. Did you see anybody operating it during that next year?

A. Yes, sir.

X Q. 30. Did any one assist you in operating the planter while you were using it?

A. Yes, sir.

X Q. 31. Who was it and what did they do?

A. Joseph Cogan helped me; he dropped.

483 X Q. 32. Was there a drill attachment on the planter when you operated it?

A. Yes, sir; there was a drill attachment for it, but then there was a part of it taken off while I used it.

Recess.

X Q. 33. Did Mr. Vincent have the planter when you went to work for him?

A. Yes, sir.

X Q. 34. Did he get any extras or repairs for the planter while you were there?

A. Yes, sir.

X Q. 35. What did he get?

A. He got some repairs about his drill attachment.

X Q. 36. Did he have the drill attachment changed?

A. I don't know what he had done.

X Q. 37. Where did he have it done?

A. At Xenia.

X Q. 38. Was the planter sent to Xenia to have it done?

A. Yes, sir.

X Q. 39. Was this after the spring's planting for the year that you used it?

A. No, sir.

X Q. 40. Was it during the planting season?

A. No, sir; it was before.

X Q. 41. How long after you went there was it sent to Xenia?

A. Immediately afterwards.

X Q. 42. What enables you to remember that it was immediately afterwards?

A. Why, because I helped to take it there, to take it to the depot, to send it on the cars.

X Q. 43. What depot did you take it to?

A. The New Holland depot.

X Q. 44. What do you mean by immediately—how many days or weeks?

A. Why, two or three days or such a matter. I don't just
484 remember the number of days, but it was a short time after I went to work.

X Q. 45. Where did you first see it after its return?

A. On the Vincent farm.

X Q. 46. Did you help to bring it from the depot?

A. No, sir.

X Q. 47. Do you know who did bring it?

A. Robert Vincent brought it.

X Q. 48. From which depot did he bring it?

A. From the New Holland depot.

X Q. 49. Was any change made in it while away, that you remember?

A. Yes, sir.

X Q. 50. What were they?

A. There was a hand-lever attachment put on it. There was some little work about the drill, but I disremember what it was.

X Q. 51. Can you not remember what change was made in the drill attachment?

A. No, sir; I cannot.

X Q. 52. Do you remember that the drill attachment before it was sent to Xenia was driven by an arrangement of shafts and gearing?

A. No, sir; I do not.

X Q. 53. Do you remember how it was driven after the return of the planter from Xenia?

A. It was driven by some kind of a chain.

X Q. 54. It was not driven by a chain, was it, when you first saw it?

A. I do not know.

X Q. 55. How long was the planter away?

A. A few days; I don't remember just the number of days exactly.

485 X Q. 56. Do you remember of any other extras or repairs having been obtained?

A. No, sir; I do not.

X Q. 57. Do you know of the planter having been sent to Xenia at any other time?

A. No, sir; I do not.

X Q. 58. Did Mrs. Lloyd have a planter?

A. No, sir.

X Q. 59. Did Mr. Chaffin have a planter?

A. No, sir; he did not.

X Q. 60. Is this Vincent planter the first one that you ever operated?

A. Yes, sir.

X Q. 61. If the hand lever was not on it when it was sent to Xenia, what did it have instead?

A. Why, a concern that you put your foot on.

X Q. 62. What kind of a concern?

A. I disremember how it was fixed; it was something that you put your foot on; I know what it was for.

A Q. 63. Did you ascertain this by using it with your feet?

A. I did by examining it.

X Q. 64. Didn't you use it with that foot concern on?

A. I never used the foot concern when I planted with it.

X Q. 65. Was the foot concern on when you planted with it?

A. Yes, sir; there was a concern.

X Q. 66; Did anybody come to Vincent's from Xenia to fix anything about the planter while you were there?

A. Yes, sir.

X Q. 67. Who was it.

A. I think it was Mr. Collier of the Shawnee Agricultural Company—Mr. Samuel R. Collier.

X Q. 68. Can you state when that was, or about the season, and what he did?

486 A. It was on or about the middle of May; he fixed something about the drill attachment; I don't know what it was.

X Q. 69. Who all have you talked to recently about this affair?

A. I haven't talked to any one, excepting Mr. Scofield, Mr. Vincent, and the attorneys.

Q. 70. Who spoke to you about it first?

A. Robert Vincent.

Q. —. Did he at that time tell you that he had testified?

A. Yes, sir.

Q. 72. Did he tell you the substance of what he had testified to?

A. No, sir; he did not.

Q. 73. Was your recollection of the matter then as clear as it is now?

A. I knew just what I know now then. Of course, it was as clear then as it is now, though I hadn't studied over it any.

Q. 74. Referring again to the visit of Mr. Collier and his doing something to the drill attachment, please reflect and see if you cannot recollect that after that time a new drill attachment was put on.

A. No, sir; I do not recollect of any new one.

Q. 75. I understood you to say that during your use of the planter you used it for dropping in hills; am I correct?

A. Yes, sir; I used it for that.

Q. 76. Was that the only way you used it?

A. It is, myself; the only way I used it on the place was for dropping.

X Q. 77. Did you plant all the corn that season?

A. No, sir; I did not.

X Q. 78. How much did you plant?

A. I do not know just how much I planted.

X Q. 79. About how many acres?

A. I suppose about 40 acres.

487 X Q. 80. Was your portion of it during the first part of the season?

A. I wouldn't know how to answer that. Some days we planted by drop and some days we drilled—that is, some days we dropped and I drove and some days Mr. Vincent drove and drilled.

(No ques. 81.)

X Q. 82. In changing from drilling to dropping was it necessary to do anything more than to throw the gearing out of gear?

A. Mr. Vincent always did the changing; I think by taking the chain off is the best I can remember.

X Q. 83. Was there a slide feed on this planter?

A. No, sir; there was not.

X Q. 84. Was the corn dropped by a rotary plate?

A. Yes, sir.

X Q. 85. Did you ever examine the plates?

A. No, sir; I never did particularly.

X Q. 86. Did you examine the plates before taking the planter to the depot?

A. No, sir; I did not.

Re-examined by Mr. PECK:

R. E. Q. 1. When you were asked in your direct examination about how many acres you had planted in the spring of 1879, to which you answered about ninety, did you mean that you individually had planted about ninety acres?

Objected to as not re-examination and improper in form.

A. No, sir; I said that we planted about ninety acres on the Vincent farm; I didn't say that I individually planted ninety acres; I didn't mean that.

488 R. E. Q. 2. When you used the hand lever by pressing it with the foot alone what, if anything else, did you do?

Objected to as not proper re-examination.

A. I always fastened the spring down with a string tied around it.

R. E. Q. 3. What do you mean by the spring?

A. I mean to fasten a string around the little thumb hold, as we would call it. (I don't know the name properly).

Recross-examination:

R. C. E. Q. 1. During the dinner recess did you talk with any person about your answer, and how you had fastened the lock latch when using your foot?

A. I wasn't with any one to talk with about it.

R. C. E. Q. 2. Didn't you walk down the street with Mr. Schofield?

A. No, sir; I did not.

R. C. E. Q. 3. Weren't you in the Arcade with Mr. Schofield during the recess?

A. I was.

R. C. E. Q. 4. Who did you come from the Arcade to the room with?

A. I came here with one of the attorneys part of the way, and part of the way by myself.

R. C. E. Q. 5. I now repeat my question: Did you talk with any person about this matter during the dinner recess?

A. About which matter do you want to know?

R. C. E. Q. 6. I mean the matter enquired about in my first re-cross-interrogatory, which the examiner will read.

A. I talked with no one; only was asked the question how I fastened it down.

WM. SHAFER.

489 Also AUSTIN C. EVANS, of lawful age, being first duly sworn, deposes as follows, the interrogatories being propounded by EDWARD TAGGART, Esq:

Q. 1. State your name, age, residence, and occupation.

A. Austin C. Evans is my name. I am 33 years of age. I reside in Springfield, O.; is and am a manufacturer of agricultural implements, consisting of corn-planters and harrows.

Q. 2. What was your occupation in 1878, and where, and what was the style of your firm?

A. I was a manufacturer of agricultural implements. The style of the firm was the Evans Manufacturing Company. My place of business was in Springfield, Ohio.

Q. 3. Who composed the firm?

A. A. C. Evans, J. M. Evans, and Alva Evans.

Q. 4. When and where, if ever, did you first see a corn-planter provided with a combined hand and foot lever?

Objection.—Objected to as immaterial.

A. In the year 1877, on the farm of Thompson Warder, I saw the first corn-planter with a combined hand and foot treadle, manufactured by Beadle & Kelley, Troy, O.

Q. 5. When and where did you first see the next corn-planter with a combined hand and foot treadle, if ever? State fully.

Objection.—Objection repeated.

A. The next corn-planter that I saw with a combined hand and foot treadle was one made by myself for the spring planting of 1878; it was manufactured in the shop of the Evans Manufacturing Company, Springfield, Ohio.

490 Q. 6. Can you produce the corn-planter which you say was manufactured in your shop in Springfield, O., for the planting of 1878; or can you produce a planter similarly constructed?

A. I cannot produce the original planter, but I can produce one similarly constructed.

Q. 7. Please produce such corn-planter that it may be offered as an exhibit in this suit.

Objected to as irrelevant.

A. Exhibit produced and offered in evidence, marked "Defendant's Exhibit the Evans Corn Drill and Planter."

Q. 8. What enables you to fix the date of making the corn-planter similar to "Defendant's Exhibit the Evans Corn Drill and Planter," which you say you made for the spring planting of 1878?

A. My memory and dates that I have.

Q. You may state fully in what manner such corn-planter was constructed; who assisted in its construction, if any one, and the circumstances attending it.

A. The corn-planter was constructed with a foot treadle and a hand lever, so that they could be used together or independently. The parts were made under my instructions, except the patterns, which I made myself; my brother, L. C. Evans, did the machine work; my father, J. M. Evans, did the casting; James Nelson the blacksmith work, and it was put together under my instructions.

Q. 10. About what time of the year was it that you finished the planter which you say you made in 1878, similar to "Exhibit the Evans Corn Drill and Planter?

A. It was for the spring planting of 1878; made and finished some time in the spring of that year.

491 Q. 11. State whether or not the planter which you made in the spring of 1878 was ever put into practical use, to your knowledge.

A. It was.

Q. 12. When and where?

A. Thomas Haley, a farmer who resides close to this place, came after a planter to plant his corn with, and I let him have the one with the combined hand and foot treadle on. It was used on his farm for the spring planting of 1878.

Objected to as irrelevant and for want of notice in the answer.

Q. 13. How do you know it was used on his farm for the planting in the spring of 1878?

A. I know it from dates that I have, and that I made twenty-five machines similar to it the same year.

Q. 14. How much planting was done by Mr. Haley in the spring of 1878 with the planter referred to?

A. I cannot say. I went out to see the machine in operation in the fields and saw it at work for quite a little time. It seemed to be doing very good work and I came away.

Q. 15. What became of that machine?

A. That machine was brought back to our factory and was placed upon some hangers suspended from the ceiling on the first floor and was kept there until our factory burned down, in the spring of 1882. It was destroyed by fire, except one piece which was saved and is now on the planter referred to as "Exhibit the Evans Corn Drill and Planter,"

Q. 16. Will you explain how you are able to remember that the planter, "Defendant's Exhibit the Evans Corn Drill and Planter," is constructed in accordance with the planter which was used on Mr. Thomas Haley's farm for the spring planting of 1878?

492 A. I remember it for the reason that the work was all done under my instructions, except the patterns, which I made myself; and I also remember the latch which is on the Exhibit Planter as being on the original planter, or, in other words, you might say the lock for locking the hand lever and foot treadle together.

Q. 17. How does Exhibit "The Evans Corn Drill and Planter" differ from the 25 corn-planters made by the Evans Manufacturing Co. for the spring planting of 1878?

A. There is no difference; it is one of those 25 and identically the same, except the others did not have a hand lever on.

Q. 18. Will you point out the changes which you made and the new parts which you applied in adopting the hand lever to the planter used on Mr. Haley's farm for the spring planting of 1878?

A. I will; the slot of the foot treadle was lengthened out in front so as to give proper room for the latch connecting the hand lever to work up and down. The foot lever belonged on the old machine; the piece to lengthen out the slot was made new; the latch was also made new—that is, it was made at a different time from the construction of the machine; the rock arm and the hand lever were also made new, and the ratchet for locking the hand lever.

Q. 19. How was it with the part that attaches the hand lever and ratchet to the bar that supports the front part of the seat?

A. That was made new also.

Q. 20. What enables you to remember that the latch which attaches the hand lever to the foot lever is the same latch that you
493 used on the machine made in 1878?

A. I remember it because it was made under my instructions.

Q. 21. Why, after the use of the planter for the spring planting of 1878, did you put it away instead of selling it?

A. For the reason that we continued right on the next season building planters with hand levers on; we put this one away for reference, as it was the first one.

Q. 22. After the fire what was done with or what became of the irons which formed a part of the machine which was used for the spring planting on Mr. Haley's farm in 1878?

A. I cannot say; I suppose they were put in the scrap pile with other iron that was taken out of the wreck, and the cast-iron part was melted over, and the wrought-iron part, except the one piece, was probably sold with other rough scrap and borings that we gather in cleaning up each year.

Q. 23. Can you produce one of the planters with a hand lever which your company made and put on the market for the spring planting of 1879?

A. Yes, sir; I can. This is one of them.

Defendant introduces the planter referred to by the witness and has it marked Defendant's Exhibit Evans Planter.

Q. 24. When were the planters similar to the "Exhibit Evans Planter" first used and made?

A. They mere made and tried in the fall and summer of 1878, but were first put into practical use in the spring of 1879.

August 14th, 1884.—At 5 o'clock p. m. adjourned until to-morrow morning at 9 o'clock a. m.

August 15th 1884.—At 9 o'clock a. m. the taking of this deposition was resumed.

494 Cross-examination by Mr. BOYD:

X Q. 25. How long did you continue to manufacture planters like "Exhibit Evans Planter?"

A. We continued to manufacture them two years—that is, the season of 1879 and 1880.

X Q. 26. If you manufactured after that what change did you make?

A. We manufactured after that. We made a general change in the construction of the whole machine.

X Q. 27. Describe the change that you made in the lever or levers for elevating the front frame.

A. We made no change in the hand lever particularly. We made a change in the foot treadle and in the mode of connecting it to the hand lever.

X Q. 28. By this change the foot treadle was connected with the hand lever so as to operate it in conjunction, was it not?

A. It was for forcing the runners into the ground, but not for raising them out.

X Q. 29. For what seasons did you construct the planters in this way?

A. For the seasons of 1881, 1882, and 1884.

X Q. 30. Did you make another change in the levers?

A. We did.

X Q. 31. Describe it, please.

A. We located the hand lever on the side of the planter, between two ratchets—a stationary and movable one. The movable ratchet was located on the bar or arm and connected to the foot treadle. There were no pieces on the foot treadle for the driver's feet, but there was a separate piece which passed up through a slot on the front end of the treadle which had the foot pieces, and foot pieces on the rear end of the treadle for elevating the runner frame.

495 X Q. 32. Look at "letters patent No. 217,083," dated July 1st, 1879, and state whether you are the patentee of that invention.

A. I am the patentee.

X Q. 33. In answer thirteen you say you made twenty-five machines similar to "Exhibit the Evans Corn Drill and Planter." What was done with those twenty-five machines?

A. They were sold to farmers and dealers in agricultural implements.

X Q. 34. Did you sell one of them to Thomas Haley?

A. I did not.

X Q. 35. Did he get one of them?

A. He did; he borrowed one to plant his corn.

X Q. 36. Did he have any other corn-planter or drill at that time?

A. I think he had a Xenia planter at that time.

X Q. 37. Please give the names and addresses of as many of the parties who bought any of these 25 machines as you can.

(Objected to as irrelevant for the reason that it is only claimed that the planter which Mr. Haley got and used contained the combined hand and foot levers, the remaining 24 having the foot lever without the hand lever.)

Counsel for the complainant objects to the statement just made as inconsistent with the sworn statement of the witness and evidently intended to suggest the answer.

A. I cannot remember the names of but one or two farmers who bought the machines as all of our books were destroyed by the fire. One of the farmers' names was Adolphus Smith, who lives near Enon, Ohio. That is all I can recollect now.

496 X Q. 38. Can you remember the names of any of the dealers?

A. I cannot now.

X Q. 39. Are you certain that these 25 machines were similar to the "Exhibit the Evans Corn Drill and Planter?"

A. I am.

X Q. 40. How recently, if at all, have you seen any of these 25 machines since selling them?

A. I seen one about two weeks ago in the hands of a farmer who had bought it second-hand.

X Q. 41. What is the name of that farmer, and where does he live?

A. His name is Edward Ogden; he lives about three miles northeast of Springfield.

X Q. 42. Did it have the hand lever on when you saw it—I mean the hand lever for elevating the runners?

A. It did not.

X Q. 43. Had it been taken off or was it broken?

A. It had never had it on.

X Q. 44. Now, how do you answer the question as to the balance of the 25 machines similar to the "Exhibit the Evans Corn Drill and Planter," as to their having hand levers for elevating the front frame?

A. The balance of the 25 machines were all constructed similar to the one that I saw at Mr. Ogden's except one machine, which had on a hand lever.

X Q. 45. Was that one the one that Mr. Haley borrowed?

A. It was.

X Q. 46. Did you sell all of the 24 machines for the same spring's planting?

A. I do not remember.

X Q. 47. Did you sell some of them for the spring planting of 1878?

A. We did.

497 X Q. 48. And the balance were for sale, were they not?

A. They were.

X Q. 49. Did you have some of them on hand at the time Mr. Haley borrowed the planter?

A. I cannot remember.

X Q. 50. Did you go with the planter to Haley's farm?

A. I think not.

X Q. 51. Did you go more than once?

A. I cannot remember.

X Q. 52. Did anybody go with you?

A. They did not.

X Q. 53. When was the planter brought back?

A. Some time after they were through planting their corn.

X Q. 54. Was the whole planter suspended to the ceiling or only portions of it?

A. I think the entire planter was put on the hanging shelf.

X Q. 55. Can you not be positive about that?

A. I cannot be positive about it.

X Q. 56. The Exhibit "The Evans Corn Drill and Planter" has been constructed specially to illustrate the original, which was destroyed, has it not?

A. It has, except one part.

X Q. 57. When?

A. Within the past two weeks.

X Q. 58. Where and when did you find the latch which now connects the hand lever and the foot treadle on the exhibit?

A. My brother, Lewis Evans, found the latch. It was with some other old scrap that came out of the fire.

X Q. 59. Is the seat standard on the exhibit in all respects similar to the one that was on the destroyed planter?

A. It is.

X Q. 60. Explain the object of the upper end of the slot in the front leg of the standard.

498 A. There was a small rod connecting the front end of the foot treadle that worked up and down in the slot, and the offset in the top of the slot was for the purpose of letting the upper end of the rod fall over into the slot to hold the runners out of the ground?

X Q. 61. The arm and painted part of the hand lever on the "Exhibit the Evans Corn Drill and Planter" is similar to the same parts on the Exhibit Evans Planter, is it not, with the exception that the hub on the latter has been cut off?

A. It is made off the same pattern.

X Q. 62. Prior to Mr. Haley's borrowing the planter, had you tested it in the fields?

A. I think not.

Re-examination by Mr. PECK:

Q. 63. I think you stated that the Exhibit the Evans Corn Drill and Planter was constructed some two weeks ago; what did you mean by that? And, in this connection, state just what you did to construct it.

A. I meant the hand lever was constructed within the last two weeks; the main part of the planter was one of the twenty-five constructed in 1878. In constructing the hand-lever arrangement we used the rock arm off of the '79 machine to represent the one we had made in 1878. We also made the ratchet and the box the rock arm is journaled in. The piece of wrought iron in the end of the rock and the loop in the end of the foot treadle were the parts that were changed and made to represent the hand lever on the Exhibit the Evans Corn Drill and Planter.

Q. 64. Where did you get the main part of the machine to
499 which you have applied the hand lever and its connections, as you have stated?

A. We got the machine from a farmer who brought it in to trade for another machine. I cannot give his name without referring to our books.

Q. 65. When you were asked if the whole machine was hung up in your shop after its use by Mr. Haley did you mean that its parts were all together in working order or that its parts were disconnected and hung up?

A. I meant that the machine was disconnected and hung up—taken apart.

Q. 66. In answer to cross-question 25, where you say that you manufactured planters like the Exhibit Evans Planter — the seasons of 1879 and 1880, do you mean they were made for those seasons?

A. Yes, sir.

The witness says: I wish to make a correction in regard to my statement as to Exhibit Evans Planter. We made them three seasons in the place of two seasons. We made them for the spring planting of '79, the spring planting of '80 and of '81, and the machine that had the hand lever combined with the foot treadle was only made three seasons in place of four seasons; only a few machines were made off of the last pattern, and they for the spring planting of 1884.

AUSTIN C. EVANS.

Also JONATHAN M. EVANS, being first duly sworn, deposes as follows, the interrogatories being propounded by Mr. PECK:

Q. 1. State your name, age, residence, and occupation.

A. My name is Jonathan M. Evans; my age is sixty-six;
500 residence, Springfield, O.; my occupation is manufacturer of corn-planters and harrows.

Q. 2. What were you doing, and where, in 1878?

A. I was in the same business and in the same place that I am in now—I mean Springfield, O.; not in the same shop, however.

Q. 3. I call your attention to "Defendant's Exhibit the Evans Corn Drill and Planter," and ask when you first saw a corn-planter provided with a hand and foot lever similar to said exhibit.

A. Some time in the spring of 1878; I can't give the exact date.

Q. 4. Where?

A. In the shop of the Evans Manufacturing Co.

Q. 5. While you can't give the exact date when you saw this planter, are you sure it was in the spring of 1878; if so, what enables you to fix that time?

A. While I fix that time from memory more than anything else, the way I know that was the time is, I came here and found the shop nearly completed in the year 1876—the Centennial year; we started the shop about the 1st of October in that year; we manufactured that year a number of corn drills and harrows, and six of the machines similar to that one (referring to the "Exhibit the Evans Corn Drill and Planter"), with the exception of the hand lever and attachments to it. All this work I speak of was for the spring of 1877. The next year we got out twenty-five similar to the "Exhibit the Evans Corn Drill and Planter," with the exception of one; that one was similar to this. I think I made a mistake in saying the twenty-five machines I mentioned were similar to the ones we manufactured the year before. I know I made a
501 mistake now. Now, I will have to except that one that I mentioned before.

Q. 6. How did these 25 machines that you speak of compare with the six that you made the year before?

A. They were essentially the same with the one exception mentioned.

Q. 7. What was that?

A. That one had the lever and its attachments on it.

Q. 8. What lever?

A. The hand lever.

Q. 9. Do you know what became of that planter that had the hand and foot lever like the "Exhibit the Evans Corn Drill and Planter" after it was made?

A. It was taken away from the shop.

Q. 10. Do you know where?

A. I didn't see it any place else.

Q. 11. Did you see it any time after it was taken away from the shop?

A. I did.

Q. 12. When and where?

A. In the first place, I saw it in our shipping room; after that on a hanging shelf. Well, I saw it some time after it went away; I couldn't give the length of time; it was six years ago.

Q. 13. Did you personally have anything to do with the construction of this planter in 1878; if so, state what it was that you did.

A. All that I remember doing was casting the rock arm, the box and ratchet.

Q. 14. What Did you cast them from?

A. From wooden patterns.

Q. 15. Where did you get those patterns?

A. Austin C. Evans made them and gave them to me.

Q. 16. How does this exhibit, "The Evans Corn Drill and
502 Planter," compare with that planter made in 1878, as to its construction and arrangement of its parts?

(Objected to as immaterial and irrelevant.)

A. It is substantially the same.

Q. 17. Do you know what finally became of that planter?

A. The shop that it was in burned and it with it.

(The whole deposition objected to as irrelevant.)

Cross-examination by Mr. BOYD:

X Q. 18. Are you the father of the last witness, Mr. A. C. Evans?

A. Yes, sir.

X Q. 19. Were you present yesterday and to-day during the taking of his deposition?

A. I was.

X Q. 20. Is he now present?

A. He is, just now.

X Q. 21. Where did you come from in 1876?

A. Delphos, O.

X Q. 22. What was done with the six planters your firm made for 1877?

A. They all went away from the shop. I don't know anything about them after that. I had nothing to do with selling anything.

X Q. 23. Were these the first two-horse planters your company made?

A. They were the first.

X Q. 24. Have you made two-horse corn-planters every year since?

A. Yes.

X Q. 25. How many did you make for 1879?

A. As near as I can remember, we made about two hundred.

X Q. 26. What enables you to remember the exact number which were made for 1878?

A. Well, the only reason that I remember that is it was a new thing for us and there were but few of them.

503 X Q. 27. Were these few all sold for the spring of 1878?

A. I had nothing to do with selling and, from personal knowledge, I don't know anything about it.

X Q. 28. Were they all taken away from the shop that spring?

A. I think they was, with the exception of the one with the hand lever on it.

X Q. 29. In what season of the year were these planters made?

A. I can't say when they were commenced, but I think most of the work was done through the winter.

X Q. 30. On all of them?

A. As far as the simple machine was concerned. The lever was put on one of them after they were all finished, I think. I couldn't give the exact time.

X Q. 31. Had all the machines except one been taken from the shop at the time the lever was put on?

A. I do not remember.

X Q. 32. Did you see the planter with the lever on when it was being taken from the shop?

A. I believe I did.

X Q. 33. Who took it?

A. I don't remember who took it.

X Q. 34. What makes you believe you saw it taken away?

A. It is in my mind that way.

X Q. 35. In addition to hearing your son testify about this matter, you have talked it over with him, have you not?

A. I have talked it over some with him; not much. He asked me a few questions and I answered him.

X Q. 36. Have you ever made any more planters like the one that was destroyed in the fire?

A. No; not exactly like it.

504 X Q. 37. What enables you to say that that one was made in 1878?

A. One thing that enables me is that we commenced building the Exhibit Evans Planter in 1878 and finished in 1879.

X Q. 38. Might not the single planter that was destroyed have been made after you made Exhibit Evans Planter?

A. I know they made none of this kind of a planter (pointing to Exhibit the Evans Corn Drill and Planter) after they commenced them (pointing to Exhibit Evans Planter).

X Q. 39. You mean, do you not, that they didn't make any more planters like the 24 after they commenced to make them like Exhibit Evans Planter?

A. I mean we didn't make any like either of the 25 after we commenced to make them like the "Evans planter."

X Q. 40. But if you had one or more of the 25, as originally made on hand after you commenced making planters like the Exhibit Evans Planter might not the hand lever have been put on one of these?

A. Not later than '78; there were none put on.

Re-examination by Mr. PECK:

R. D. Q. 41. When asked in what season of the year the 25 planters were made you answered that most of the work was done through the winter; please name the two years of the winter you mean.

A. It was after the first of January, 1878; that is my impression; I cannot be positive.

505 R. D. Q. 42. What I want to know is whether you meant the winter of 1877–'78 or the winter of 1878–'79?

A. The winter of '77–'78.

JONATHAN M. EVANS.

Recess.

Also WILLIAM T. HALEY, being duly sworn, deposes and says as follows, the interrogatories being propounded by Mr. TAGGART:

Q. 1. State your name, age, residence, and occupation.

A. My name is William T. Haley; my residence, Clarke county, Springfield township, Ohio; my occupation, farmer; my age is 56.

Q. 2. What were you doing, and where, in the year 1878?

A. I was farming in Springfield township, on the same farm that I now own.

Q. 3. I call your attention to the corn-planter, "Defendant's Exhibit the Evans Corn Drill and Planter," and ask you when and where, if ever, you first saw a corn-planter similar to this exhibit?

A. I saw it on our place; I think the first I saw of it was in Mr. Evans' shop; that was in '78; in the spring of '78.

Q. 4. For what purpose was it on your place in the spring of 1878, and how long did it remain there?

Objected to as irrelevant.

A. We were planting with it; it remained there—well, ten days or two weeks; I can't say just when, but it was about ten days or two weeks.

Q. 5. How much corn was planted with it? Give the number of acres.

506 Objected to as irrelevant, because no notice has been given in the answer.

A. There was about fifty-six that we planted with it, and I ain't certain how much of the north field was planted; 56 acres that I know of.

Q. 6. How many fields were there in the 56 acres that you say were planted with this planter?

A. Fifty acres, as near as we could get at it, in the one field and six in the other.

Q. 7. How many acres in the field which you say you are not certain whether it was planted with this planter or not?

A. There was 18 acres in that field.

Q. 8. What enables you to fix the date as in the spring of 1878?

A. I had a man working for me by the name of Armstrong, and he commenced working for me in March, I think it was; he helped tend that six acres.

Q. 9. Have you any other reasons?

A. Yes; well, it was the year before my son was married, and I let him have the six acres after it went into grass, and I have never had it in corn since.

Q. 10. What enables you to say that the Exhibit "The Evans Corn Drill and Planter" is similar to the corn-planter which you used on your farm in 1878?

A. Well, that lever there is the first I ever saw.

Q. 11. Which lever do you refer to?

A. I refer to that which holds it in the ground.

Q. 12. Designate the parts in some way so that they can be identified.

A. The latch is the means of holding the drills in the ground. I never had one before that did it and liked it on that account.

507 Q. 13. How does the latch correspond in appearance with the one on the planter that you used in 1878?

A. It looks to be the same latch.

Q. 14. Had you ever before that time seen a corn-planter having a hand lever for depressing or elevating the front runners?

A. It was the first I ever saw.

Q. 15. How did the corn-planter that you got of Mr. Evans in 1878 work?

Objected to as irrelevant.

A. I was much pleased with it; it was the best I ever saw—I ever used, I might say.

Cross-examination by Mr. BOYD:

X Q. 16. How long have you lived on your present farm?

A. Twelve years.

X Q. 17. How many corn-planters have you had in that time?

A. I don't know as I know just how to get at that. I have had three horse-power planters; then I have had several hand planters—I couldn't say just how many—half a dozen, and maybe more.

X Q. 18. How many horse-power planters did you have in 1878 exclusive of Mr. Evans'?

A. Only had one, and it was a one-horse planter.

X Q. 19. Did you use it in 1878?

A. No; I didn't use it in 1878; it was out of repair.

X Q. 20. Did you buy a two-horse planter since 1878?

A. Yes.

X Q. 21. More than one?

A. One was all.

X Q. 22. When and from whom did you buy it?

A. Well, I bought a planter of O. H. Anderson in 1879 or '80—I don't know which. Yes; in '79, I think.

508 X Q. 23. Whose make or what was it called?

A. It was made in Xenia; I believe it was the "Buckeye."

X Q. 24. Did Mr. Evans send the planter out to your place?

A. I think I went after it.

X Q. 25. Had he asked you to go after it?

A. No, sir; I went of my own accord.

X Q. 26. Did you go with the intention of purchasing one?

A. No, sir; not at that time I didn't.

X Q. 27. Did you take it out for the purpose of trying how it would work?

A. No; I took it out to plant my corn, or to drill with it, rather. Financials weren't plenty with me then, and I was rubbing it through as cheaply as possible.

X Q. 28. Was your intention to return it?

A. Yes; but he sent out and got it before I returned it.

X Q. 29. Was this Mr. Evans the one who is now sitting before you?

A. Yes.

X Q. 30. How often did he go out to see it while you were using it?

A. He was there but once.

X Q. 31. Did you make any report to him about its operations?

A. Some time after he asked me how I liked it; I told him it was the best thing in hard ground that I had ever had.

X Q. 32. Had you ever used any two-horse planter before this?

A. I used one—that's all.

X Q. 33. Where?

A. That was down near Charleston, before I sold out down there.

X Q. 34. Was the Evans planter new when you got it?

A. I couldn't say positively whether it had ever been used or not, but I don't think it had.

509 X Q. 35. Is it usual to borrow new planters from manufacturers?

A. I couldn't say. I have been used pretty well by all the manufacturers. I think I have borrowed two new ones from Mr. Evans—one-horse drills that had never been out of the shop.

X Q. 36. Has Mr. Evans ever taken any other planter to your place for the purpose of testing it?

A. I never knew him to fetch a planter there or send one there of any kind. He would frequently take or he took two away, but I always went and got them myself.

X Q. 37. When you got the Exhibit Planter were there any others at the shop?

A. I couldn't say I saw any others. Mr. Evans said, when I told him my situation: There is a planter; take it out and use it.

X Q. 38. Did he say anything about its having some new features, and he wished to know how they would operate?

A. He didn't say, but I discovered, of course, the arrangement that was on it, and he said he thought it was a good thing, and he asked me how I liked it.

X Q. 39. Why didn't you buy it at the time you bought the Xenia planter?

A. I wanted to drop in hills. It was not, in my estimation, a perfect dropper; it was a good driller, but not a perfect dropper.

X Q. 40. Were not the — Evans making good droppers at the time you bought the Xenia planter?

A. I didn't examine the Evans planters all through. Mr. Evans was a stranger to me partially; this man I bought the Xenia planter of was not. I wasn't prepared at that time to pay for the planter, and was well acquainted with my friend Anderson here. That was one thing that induced me to buy the Xenia planter.

510 X Q. 41. When did you first think of this matter after 1878?

A. Well, now, I don't understand the question.

X Q. 42. I mean when did you commence to think of your use of the Evans planter?

A. Now, if any man can answer that question he can do more than I can.

X Q. 43. Why can't you answer the question?

This and the two preceding questions objected to for vagueness, no relative time having been given to the witness.

A. I can't see anything to answer that I see.

X Q. 44. What do you understand the question to ask for?

A. I didn't understand it and don't understand it yet; that is all.

X Q. 45. Have you been thinking about the use of the Evans planter in 1878 ever since that time?

A. I haven't been thinking about it all the time, of course, since that time. I have been watching everything up in the planter line because I calculated to buy. Of course I would look at others as well as his.

X Q. 46. Have you recently talked to Mr. Evans about the old planter?

A. Yes; we talked about it probably a week or ten days ago—the first we had talked about it.

Redirect examination by Mr. PECK:

Q. 47. Please reflect again about the Xenia planter and state whether you did not have that planter already at the time you got Mr. Evans' planter.

511 Objected to as improper in form.

A. I had Mr. Evans' planter two seasons. Well, I used them together one season, I know; I used his planter one season with the Xenia planter. I don't know—I wouldn't be positive of the date of that—but I think it was in 1879.

Q. 48. Had the Xenia planter any drill attachment?

A. Not any.

Q. 49. Had that fact anything to do with your going to Mr. Evans for a planter?

Objected to as not re-examination and leading in form.

A. Yes; I wanted a drill; I wanted to drill my corn; that was the reason I preferred his planter.

Q. 50. Did you hill any corn in 1878?

A. Not any. We sometimes planted with the Xenia planter by step dropping.

Q. 51. What planter did you use for putting in the eighteen acres in 1878?

Objected to as not re-examination.

A. It appears to me we had two; one of them was the Evans planter; but I ain't positive—it appears to me we had two.

Q. 52. In order to refresh your recollection I will ask you if you did not tell Mr. Evans at the time you borrowed the planter of him in 1878 that you had a Xenia planter, but that it had no drill on it, and you wanted to drill the greater part of your corn that year?

Objected to as not re-examination and incompetent.

512 A. I remember telling him that, but I couldn't remember the date, whether it was the first year or the second year I got them.

his
WILLIAM T. x HALEY.
mark.

Also CHARLES B. SLATER, being duly sworn, deposes as follows, the interrogatories being propounded by Mr. PECK:

Q. 1. State your name, age, residence, and occupation.

A. My name is Charles B. Slater. I am about 28 years old. I live at Mr. William T. Haley's, Springfield Township, Clarke county, Ohio. I am working on his farm.

Q. 2. Where were you employed in 1878—in the year 1878?

A. I was working for Mr. Haley.

Q. 3. Look at this corn-planter here (indicating Defendant's Exhibit, the Evans Corn Drill and Planter), and state if you ever saw a corn-planter similar to that.

A. Yes, sir.

Q. 4. Where did you see it?

A. Out to Mr. Haley's.

Q. 5. Did you ever see it planting corn?

A. Yes, sir.

Q. 6. Who did the driving?

A. Mr. Haley at the first start and I did after that.

Q. 7. Do you know how many fields were planted with this planter?

A. Two, to my knowledge.

Q. 8. When you were driving that planter at Mr. Haley's how did you work it?

A. Worked it with my feet.

Q. 9. Any other way?

A. Yes, sir; to keep it in the ground, working that lever on top there.

513 The deposition objected to as irrelevant, and because no notice has been given in the answer.

Cross-examination by Mr. BOYD:

X Q. 10. How long have you worked for Mr. Haley?

A. Going on thirteen years.

X Q. 11. Did you come to the city with him to-day?

A. No, sir; I come by myself.

X Q. 12. Who asked you to come?

A. Mr. Haley did.

X Q. 13. When?

A. This morning.

X Q. 14. Did he tell you what he wanted you to come for?

A. Yes, sir.

X Q. 15. Did he tell you that it was in 1878 that you used the planter?

A. Yes, sir.

X Q. 16. Did you ever use any other planter made by Mr. Evans on Mr. Haley's place?

A. Not to my knowing. I have used several planters.

X Q. 17. Can you describe any of the other planters you used?

A. He got one from Mr. Anderson, but I don't know what they call it.

X Q. 18. When did he get the one from Anderson?
A. I think it was after he got this one from Mr. Evans.
X Q. 19. In what year did he get it?
A. I don't know; I could not say.
X Q. 20. Did you use the planter got from Anderson?
A. Yes, sir.
X Q. 21. You used it a great deal more than you did the Evans one, did you not?
A. No; I used Mr. Evans' the most.
514 X Q. 22. How many seasons did you use the Evans one?
A. One.
X Q. 23. How many seasons have you used the Anderson one?
A. I couldn't say how many seasons.
X Q. 24. Have you used it three or four seasons?
A. I think we used it three seasons.
X Q. 25. Then, have you not used it more during those three seasons than you did the Evans in one season?
A. I don't think we have.
X Q. 26. Have you planted all of your corn with the Anderson planter since getting it?
A. No, sir; he hasn't got it now; he sold it, I think.
X Q. 27. To whom did he sell it, and when?
A. I don't know who he sold it to; I can't say just when he sold it, but I think he sold it.
X Q. 28. Did you have it last spring?
A. No, sir; I don't think he did.
X Q. 29. Did you use a corn-planter last spring?
A. Yes, sir.
X Q. 30. What kind was it?
A. I couldn't say what kind it was, but you could drill or checker with it, either one.
X Q. 31. When Mr. Haley told you you used the planter in 1878 did he also tell you that there was a hand lever on it?
A. No, sir.
X Q. 32. Did you come in to see a planter?
A. No, sir.
X Q. 33. When did you first see the planter that is in the room here (the Exhibit the Evans' Corn Drill and Planter)?
A. I seen it to-day when I came up here.
515 X Q. 34. How do you know that it was in 1878 you used the planter, except that Mr. Haley told you so?
A. I didn't know what year it was, though I knew it has been a good while ago.
X Q. 35. Who owned the planter you used last spring?
A. It belonged to Mr. Haley's son.
X Q. 36. Mr. Haley, then, dosen't own a planter?
A. I think this is sort of a partnership planter that they have got between them.

his
CHARLES B. x SLATER.
mark.

Also JAMES S. HALEY, being duly sworn, deposes and saith as follows, the interrogatories being propounded by Mr. TAGGART:

Q. 1. State your name, age, occupation, and residence.

A. James S. Haley; age, 27; occupation, a farmer; I reside in Greene township, Clarke county, Ohio.

Q. 2. What were you doing in 1878, and where?

A. I was working on the farm for my father, William Thomas Haley.

Q. 3. I now call your attention to the planter, Defendant's Exhibit the Evans Corn Drill and Planter, and ask you where you first saw a planter similar to this exhibit?

(Objection.—The witness should be asked to describe what he sees.)

A. Well, I recognize the pattern, and my first sight at it was on the farm, in 1878.

(Objected to as irrelevant, for want of notice in the defendant's answer.)

Q. 4. For what purpose was the machine, which you say was similar to the exhibit, on your father's farm in 1878, and what did you do with it there?

516 (Objected to, because the witness has not said he ever saw a planter similar to the exhibit.)

A. For planting corn, and we planted the corn with it.

Q. 5. How much corn did you plant with it?

A. With the Evans' planter that year? Is that what you mean?

Q. 6. Yes; I mean the Evans' planter which you say was constructed like the Exhibit "The Evans Cord Drill and Planter."

(Last objection repeated.)

A. Well, we planted two fields, one containing about 50 acres and the other about six. There was a third field in corn that year; I am not certain whether the Evans' planter planted a great deal of it or not.

Q. 7. What enables you to say that it was in the year 1878 that you used the Evans corn-planter similar to the exhibit?

A. Well, one or two things. It was while I was still home with my father, and I was married in 1879, in February, and then again the six-acre piece was followed from corn to wheat and then seeded down, and I had it for my pasture in the fall of '79 and '80, and I can bring that date on up if you want it.

Q. 8. When did you leave your father's place?

A. In the fall of '80.

Q. 9. You may state, if you can remember, who rode the Evans planter in 1878?

A. Well, father and the colored man, Charlie Slater, between them rode in planting all except a portion of the six acres that I rode myself.

Q. 10. How did the Evans planter work?

A. Very well.

517 Q. 11. How long did you have it out there at the farm?

A. During the season of planting—a week or ten days, or such a matter.

Q. 12. What enables you to say that this exhibit, "the Evans Corn Drill and Planter," is similar to the corn-planter which you got of Mr. Evans for the planting of 1878?

A. By its construction, the appearance and the looks of the thing, the way it is arranged together there, and then it was something new, something I hadn't seen before. I had seen corn-planters, but none similarly constructed in the way of fastening the machine down in hard ground. I had never seen one with a lever before I seen that.

Q. 13. Which lever do you refer to?

A. The hand lever—the hand lock lever—the one that runs the latch.

Q. 14. How many acres were there in the farm on which you planted corn in 1878?

A. In the neighborhood of 440.

Q. 15. You may state, if you remember, whether your father bought a Xenia planter at any time; and, if so, when he bought it.

Objected to as irrelevant and because the witness' father has testified fully in reference to the Xenia planter, and any attempt to correct or impeach his testimony would be improper.

A. Yes, sir; he bought one. He had it (whether he agreed to keep it or not I don't know) before the Evans planter came on the place. That is the reason we borrowed instead of bought. We had one.

Q. 16. If you had the Xenia planter on the place what reason had you for borrowing the planter from Mr. Evans?

518 A. Well, father had a notion or drilling, and he didn't want quite so many grains in a place.

Q. 17. Had the Xenia planter any drilling attachment?

A. If it had any there was none with it.

Adjourned until to-morrow morning at 9 o'clock.

AUGUST 16TH—9 o'clock a. m.

The taking of these depositions resumed.

Q. 18. Are you able to state any more definitely this morning the time when your father purchased the Xenia planter? If so, state it.

A. Yes, sir; in 1878—April 28th.

Q. 19. What enables you to fix the date, if anything?

A. Well, I have the date from Mr. O. H. Anderson's day book when the planter was purchased, and it was the year before I was married, and I was married in '79.

The two preceding answers objected to for incompetency and hearsay.

Cross-examination by Mr. BOYD:

X Q. 20. I observed that in giving the date of the purchase of the Xenia planter you read from a paper. What was that paper?

A. It is a paper received from O. H. Anderson, in his writing, and with his name to it.

X Q. 21. Did you examine Mr. Anderson's day book yourself?

A. Yes, sir.

X Q. 22. When?

A. Yesterday.

519 X Q. 23. After being sworn in this cause?

A. Yes, sir.

X Q. 24. Did you see Mr. Evans on the farm while his planter was there?

A. No, sir.

X Q. 25. I mean Mr. A. C. Evans, now present, and who was here yesterday while you were testifying. Did you not see him there?

A. No, sir; not on the farm.

X Q. 26. Do you remember how the lever connections were arranged on the planter when used on your father's farm.

A. Yes, sir.

X Q. 27. I call your attention to the bar which connects the foot lever with the rearward extension of the front frame, and ask you in which of the holes at either end the connections were made.

A. I can't see through the question.

X Q. 28. What is it you don't understand?

A. The question.

X Q. 29. Do you understand which bar my question referred to?

A. No, sir.

X Q. 30. I mean the bar, which you will observe I put my hand on, which is connected at its lower end with the rearward extension of the front frame, and that said bar is provided with three holes at its lower end. Now, dividing my former question, I ask you through which of these holes was the connection made to the front frame?

A. That would be owing to the hardness of the ground.

X Q. 31. In the hardest ground, which was it in?

A. In the lower hole to lengthen the bar.

X Q. 32. Did you in working in soft ground change it to one of the higher holes?

A. I think not; it wouldn't be hardly necessary to change it.

520 X Q. 33. What did you mean by your answer in which you said it would be owing to the hardness of the ground which hole you would use?

A. Well, providing it was in one of the upper holes, and the ground was very hard and you couldn't get power enough by running the hand lever forward in the notches, it would be very convenient to have a hole farther down the bar.

X Q. 34. You have not answered my question, for I did not ask you about the function of these holes, but simply how you used them, and you have answered that that depended on the hardness

of the ground. Now, did you use the planter with the connection made through either of the holes on the lower end of the bar except the extreme end one?

The question is objected to as incompetent, it being merely a repetition of X questions 31 and 32, in which the witness answered fully that he only used it in the lower hole.

A. No, sir.

X Q. 35. In planting in hard ground, which of the holes in the upper end of the bar did you use?

A. The top hole, I suppose; there are three holes there and maybe we used them all, owing to how we wanted it.

X Q. 36. What planter did you ever use prior to seeing the Evans one?

A. I don't understand what you mean by prior—whether it is before or behind.

X Q. 37. You may assume that it means before, and then answer my question.

A. The Keystone, I think its name is.

X Q. 38. Where did you use that planter?

A. We used it there, on father's place.

X Q. 39. Was it a two-horse planter?

A. Yes, sir.

521 X Q. 40. Who owned it?

A. J. M. Benson—I am not certain about it.

X Q. 41. What year was it?

A. '76 or '77; maybe both.

X Q. 42. Where does Mr. Benson live?

A. He is an adjoining neighbor.

X Q. 43. How many acres of corn were planted in all on your father's farm in 1878?

A. About 50, and 6, and 18.

X Q. 44. In the years since 1878 has the corn on your father's place been planted in hills or in drills?

A. Well, I will say hill, drill, and step-drop; three ways since that year.

X Q. 45. What planter was the drilling done with?

A. None at all; you might call it a planter; it was done with a one-horse drill.

X Q. 46. When did you get that one-horse drill, or had you several of them?

A. Well, we didn't have any; we, I think, borrowed it from J. T. Warder. Understand, I mean we didn't own any of them.

X Q. 47. What were the hand planters which you had on the farm?

A. I don't know that I understand the meaning of that. I want to know what you mean by a hand planter.

X Q. 48. Your father testified that he had used several hand planters—a half a dozen or, perhaps, more—and I want to know what these hand planters were. Can you tell me?

(Objected to as improper, as the witness' father would have been the person to have asked the question of.)

A. I don't know what he means.

X Q. 49. Were all the one-horse machines which you had on the farm drilling machines?

522 A. No, sir; we had lots of one-horse machines which had nothing to do with drilling corn or anything else.

X Q. 50. I should have said one-horse corn-dropping machines. With this understanding, please answer my previous question.

A. No, sir.

X Q. 51. Were any of them?

A. When?

X Q. 52. At any time?

A. Yes, sir.

X Q. 53. When did you have the first one?

A. I think I used one three years ago.

X Q. 54. Was that the first time?

A. I think it was for a one-horse drill.

X Q. 55. Were you familiar with the construction of the Xenia planter that you had?

A. I think so; yes.

X Q. 56. Was there a hand lever on it?

A. Yes, sir; one by which you dropped the corn by.

X Q. 57. Could the corn be dropped without the use of that hand lever on that planter?

A. No, sir; not without something similar.

X Q. 58. Did it have a hand lever for elevating the runner frame?

A. No, sir.

X Q. 59. Did you ever examine the dropping devices on that planter; and, if so, can you describe their general character—that is, was it a slide movement or a rotary plate?

A. If I recollect right, I think the Xenia planter was a slide movement.

X Q. 60. Who has that planter now?

A. I don't know.

X Q. 61. Who got it from your father?

A. I don't know that either.

X Q. 62. Was it a Mr. Click?

A. I don't know that either.

X Q. 63. Do you know a Mr. Click?

A. Yes, sir.

523 X Q. 64. What is his first name, and where does he live?

A. I think his first name is James, and he lives, I think, about five miles south of town, near the Clifton pike. We call him Jim for a nick-name.

JAMES S. HALEY.

(Counsel for complainant requests the examiner to identify one of the cover plates on Defendant's Exhibit Evans Planter as "hopper box covers;" identified and so marked.)

J. GUILFORD WHITE.

Also LOUIS C. EVANS, being duly sworn, deposes as follows, the interrogatories being propounded by Mr. PECK:

Q. 1. State your name, age, occupation, and residence.

A. My name is Louis C. Evans; I am 27 years of age; a machinist, and I reside in Springfield, Ohio.

Q. 3. Please look at Defendant's Exhibit "the Evans Corn Drill and Planter" and state where and when, if ever, you first saw a machine similar to this exhibit in its construction and arrangement of parts.

(Objected to as incompetent and irrelevant.)

A. In the spring of 1878, at the factory of the Evans Manufacturing Co.

Q. 4. Did you personally have anything to do with the construction of that machine? If so, state what it was that you did.

A. The greater part of the machine work on the entire machine.

524 Q. 5. I call your attention to the latch that connects the arm of the hand lever with the forward part of the foot treadle and ask what, if anything, you know about that particular piece.

(Objected to as irrelevant.)

A. What bar is meant?

(Counsel points out the bar referred to, which has notches in its front edge and a short pin through its lower end.)

Q. 6. Question repeated.

A. I done the machine work on it. I drilled the holes in it and placed the pin in the bottom of the bar.

Q. 7. State, if you know, who cut the notches on said bar and split it at the top?

Last objection repeated.

A. The notches, I worked them myself, and the blacksmith work on the top of the bar was done by Mr. Nelson—James Nelson.

Q. 8. If there is any other work that you particularly remember having done on that machine, what was it?

A. The machine work in general, but especially the work connected with the hand lever. The work on the hand lever I remember more distinctly, being one of the 25 we built in the season of 1878.

Q. 9. One of the 25 hand levers, do you mean?

A. No, sir.

Q. 10. What then?

A. One of the 25 machines.

Q. 11. Did the other 24 have hand levers?

A. No, sir.

Q. 12. Referring, now, to the "Exhibit the Evans Corn Drill and Planter," how does the latch with the notches in it compare with the

latch that was on the machine built in 1878, to which you have referred?

A. This is the original piece.

525 Q. 13. Referring again to this same exhibit, if the hand lever and its connections to the machine and foot lever were taken off, what, if anything, would the balance of the machine resemble?

Last objection repeated.

A. It would resemble the other 24 that were built at the same time.

Q. 14. Can you produce one of the foot levers which was on one of those 24 machines built in 1878?

A. I believe the one you have in your hand was on one of the 25 or 24. There was 25 machines built, so far as the number goes.

Q. 15. Wherein, if at all, does this foot lever differ in shape or construction from those that were on the 24 machines built in 1878 that did not have the hand lever?

Last objection repeated.

A. Only inasmuch as this being cut out in the center and front and a piece of wrought iron being inserted in the slot, forming a connection to the bar attached to it.

Q. 16. I don't think you understand my question. I asked how this foot lever which I have in my hand compared with the foot levers on the 24 machines, omitting the machine that had the hand lever?

A. I misunderstood your question. This one is the same as the foot levers on the 24.

(Counsel offers said lever in evidence and has the same marked "Defendant's Exhibit Evans Foot Lever.")

The offer objected to as irrelevant.

Q. 17. State, if you know, what became of that planter with the hand and foot levers like the Defendant's Exhibit "The Evans

526 Corn Drill and Planter" after it was made.

A. After it was made it was taken out and used; it was taken to Mr. Haley's, so I understood.

Answer objected to as incompetent.

Q. 18. What became of it, if you know, after that?

A. It was returned to the factory and placed upon some shelving in the front part of the shop.

Q. 19. Was the machine all connected together when it was placed on the shelving?

A. No, sir.

Q. 20. What finally became of the machine, if you know?

A. It was burned in the fire at the time the factory burned on West Main street, in the spring of 1881, I believe.

Q. 21. What enables you to say that the latch on this exhibit is the same piece that was on that planter made in 1878?

A. From the facts that there was only one of the kind made, and after the fire I had it saved along with other pieces that I knew to be of value, and could not have been mistaken in it from the fact that there is two places welded into it, one to lengthen the upper slot and a lug or projection on the back. These make me know definitely that it was the same bar.

Q. 22. What is the upper slot that you refer to as having been lengthened?

A. The third one of the three, the upper one. You will there notice a weld.

Q. 23. Who did this work of welding and putting on the projection at the back of the latch?

A. Mr. James Nelson.

527 Q. 24. Were these changes in the latch made before or after this machine was taken away from your shop to be used at Mr. Haley's?

A. I believe they were made after. I could not be positive as to that.

(The whole of the foregoing objected to as irrelevant and incompetent.)

Cross-examination by Mr. BOYD:

X Q. 25. Are you a brother of Mr. A. C. Evans, who was present during the taking of a part of your deposition?

A. Yes, sir; I am a brother of Mr. A. C. Evans.

X Q. 26. Did the 25 machines as originally constructed each have a lever like Exhibit Evans Foot Lever?

A. Yes, sir.

L. C. EVANS.

Recess.

Also JAMES NELSON, being duly sworn, deposes as follows, the interrogatories being propounded by Mr. TAGGART:

Q. 1. State your name, age, occupation, and residence.

A. My name is James Nelson; I was 42 years old the 11th day of October; I reside in Springfield, Ohio; by occupation I am a general blacksmith.

Q. 2. What were you doing and where were you at work in the year 1878?

A. I was carrying on a shop on West Main street, Springfield, Ohio.

528 Q. 3. I call your attention to the corn-planter, Defendant's Exhibit the Evans Corn-Drill and Planter, and ask you when and where you first saw such a corn-planter?

(Objected to as improper, the witness not having stated that he ever saw such a planter.)

A. I saw it in the spring or the winter during the year 1878

Q. 4. Will you state what enables you to say that this exhibit is similar to the corn-planter that you saw in 1878?

A. Well, there is two or three things that enable me to say it. During that season I did a great deal of work on the corn-planter. I made all the irons that were made of wrought about the planter during that season, or most all.

Q. 5. When did you first see a corn-planter similar to this exhibit?

A. In Evans' manufacturing shop—the adjoining lot to my shop and lot.

Q. 6. How does the latch which connects the hand lever to the foot lever correspond with the latch which you saw on the planter in Evans' shop in the spring of 1878?

A. Why, it is just about the same. One portion is a little different from the one I forged the iron of. It didn't come out quite so far in front, that's all. The latch itself is just the same. The slotted end of the loop of the foot treadle was just a little different; the shoulders that show on this at the bottom showed on top on that.

Q. 7. Are you able to state whether or not this connecting latch is the same latch that was on the machine that you saw in Evans' factory?

A. The same latch.

Q. 8. How are you able to identify it?

A. I worked on it.

Q. 9. Point out what you did.

529 A. I first bent it. I am kind of between two things—whether I put on the head next the top part or the back catch. The last that I did to it was to splice it out between the top notch.

Q. 10. Explain what effect it had on it by splicing it out, as you call it, between the top notch. State just what you did.

A. The iron—before that it was spliced on—didn't reach down by half an inch where they wanted it to come. I put in a half-inch iron there and made it half an inch longer. The notches were all the same, or about the same, when I cut it in two. I spliced in that half-inch iron in order to get that lower notch to catch hold half an inch lower down.

Q. 11. Explain how you made the notch or the hook on the back side of the latch.

A. I cleaned out a place on the back part of the bar, chamfered another piece, and welded it on. Afterwards (it had a crack on the contrary side of it) I welded on another thin piece to secure the crack.

Q. 12. You may state, if you know, who made the loop on the foot treadle of the machine which you saw in Mr. Evans' shop in 1878 with which the latch engaged?

A. The loop was made by Louis Evans. It was just a temporary-made concern. He was no blacksmith; he just undertook to make that, and filed it out. The foot treadle was cast iron—the first one. I don't know whether the foundry was running at that time or not.

Q. 13. Did you have anything to do with the finishing of the

wrought-iron loop with which the latch engaged on the Evans planter after that loop was blocked out by Louis Evans?

A. That loop was taken out, and I made another one in its place.

530 Q. 14. What enables you to fix the date as in the spring of 1878 that you saw the planter in Mr. Evans' shop similar to this exhibit?

A. The year preceding that was '77. There was a half dozen made different from this that I made all the irons for. I was on the other side of the street from their shop. During that year, in the fall, I bought a lot from Mr. Diebert, which was the adjoining lot to that of the Evans Man'f'g Co. During that year I made the tire of the six planters, and it was hard work. I never will forget it. The next year, which was the year 1878, Mr. Evans relieved me of making the tire by getting them from Troy, Ohio, and the tire that he had got to make tire for these planters I cut up and made cutters during that spring. During that time, from the 1st of January, '78, through the spring months, I worked on that catch. What makes me sure, I had a hard time with the runners. I had to case-harden them. They was made out of iron; that is why that I know the work was done during that time.

Counsel for complainant objects to the whole of the foregoing deposition as irrelevant and incompetent, and for these reasons declines to cross-examine.

Defendant's counsel gives notice that defendant will move for leave to amend its answer by adding thereto the names of all the witnesses so far examined whose names do not appear in the answer.

JAMES NELSON.

NOTE.—The objection on page 87, which appears after the
531 third question in the direct examination of James S. Haley, was written after the deposition had been taken and at the request of the complainant's counsel; also the objections to the 4th and 6th questions, same deposition, page 88.

J. GUILFORD WHITE,
Notary Public.

532 Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE FARMERS' FRIEND MAN'F'G CO.

vs.

THE CHALLENGE CORN-PLANTER CO.

Testimony taken on the part of the defendant in the above cause before Fred. W. Stevens, notary public, Kent county, Michigan, at Grand Haven, Michigan, on the 26th day of August, 1884, pursuant to the notice hereto annexed and the stipulation of the parties to said cause, made on the 20th day of June, 1884.

Present: E. E. Wood, Esq., for complainant, and Edward Taggart and Arthur Stem, Esqs., for defendant.

By request of parties it is ordered that these depositions be taken by question and answer.

JOSEPH COGAN, a witness produced on behalf of the defendant, being first duly sworn, testified as follows in answer to direct interrogatories propounded by Mr. TAGGART:

Q. 1. State your name, age, residence, and occupation.

A. Joseph Cogan; age, 27 years; residence, Liberty Township, Jackson county, Ohio; farm employé.

533 Q. 2. What were you doing, and were you at work in the years 1879 and 1880?

A. In the year 1879 I was working for Robert W. Vincent; also in the summer of 1880.

Q. 3. Have you seen the corn-planter Defendant's Exhibit Improved Buckeye Planter?

A. Yes, sir.

Q. 4. When and where did you first see the same or a similar corn-planter?

A. At R. W. Vincent's, in Marion township, Fayette county, Ohio, in the years 1879 and 1880.

Q. 5. What time in 1879 was it when you first saw it?

A. I don't remember just what time; it was in the spring of the year.

Q. 7. What enables you to fix the date as the spring of 1879 that you first saw such planter? State fully.

A. That was when I first went there to work—worked with it that summer, 1879, and also 1880. I left there in the fall of 1880, and haven't been back there since.

Q. 7. Where did you go to when you left there in — fall of 1880?

A. I went to Liberty township, Jackson county, Ohio.

Q. 8. What enables you to say that the corn-planter Defendant's Exhibit Improved Buckeye Corn-Planter is the same machine, or a similar machine, that you saw on the farm of R. W. Vincent in the spring of 1879? State fully your reasons.

A. It is the first I ever used that had hand and foot lever for the purpose of raising and lowering the runners. I used it in 1880—1879 and 1880. I also used the lever to put my foot against the lever in planting. I frequently would tie the latch up and have one foot on the foot lever, the other on the hand lever. I forced the runners into the ground with my foot with the hand lever.

534 Q. 9. Explain a little more fully how you forced the runners into the ground with your foot on the hand lever.

A. I tied the latch up so it wouldn't catch; I braced my foot against the hand lever and the other foot on the foot lever, and by that means I could force it into the ground.

Q. 10. With the latch tied up as you have described, could you with the feet alone both raise and lower the front runners?

A. Yes, sir.

Q. 11. How many acres of corn was planted on Mr. Vincent's farm with the corn-planter above described, in the season of 1879, and how many, if know, in the season of 1880?

A. There was about 90 acres planted, but it wasn't all on his farm (he rented some), in the year 1879. In the year 1880 he didn't have so much. I suppose about 65 or 70 acres.

Q. 12. State whether or not, to your knowledge, any change was made in the planter from the time you went to work for Mr. Vincent, in the spring of 1879, till the time you left, in 1880?

A. No, sir.

Q. 13. Who, if any one, beside yourself worked for Mr. Vincent in the year 1879, and who in 1880?

A. Mr. Wm. Shafer, in 1879; Mr. John Nelson, in 1880.

Q. 14. Did you use the machine for the purpose of hilling as well as drilling corn?

A. Yes, sir.

Cross-examination by Mr. WOOD:

535 X Q. 15. Describe the foot lever that was on that machine when you went there.

A. It was two pieces that run forward to the front runners, and a back to place your feet on.

X Q. 16. Placed your foot on the back end of the lever?

A. Yes; on the back end of the piece.

X Q. 17. Placed both feet on the back end?

A. Sometimes.

X Q. 17½. Were there two rests for the feet?

A. Yes, sir.

X Q. 18. Whereabouts was the pivot on the lever that connected it to the runner frame?

A. I don't remember.

X Q. 19. Was there a pivot connecting it to the front frame?

A. I think there was.

X Q. 20. Was there a pivot connecting it to the wheel frame?

A. I can't say positive how it was fixed now.

X Q. 21. How many different places were there to put your foot on, for the foot-lever arrangement?

A. There were two—one for each foot.

X Q. 22. Do you recollect the time Mr. Collier came there to see that planter in the summer of 1879?

A. I recollect a couple of men coming there, but I didn't hear his name—if I did, I have forgotten it—for the purpose of fixing something about the planter.

X Q. 23. Were they connected with the manufacture?

A. I think they were.

X Q. 24. Where did you see them, in the field?

A. Yes, sir.

X Q. 25. What was the matter of the planter?

A. Something the matter of the drill arrangement.

536 X Q. 26. Now, who run the planter in '79 chiefly—you, Mr. Vincent, or Mr. Schafer?

A. Mr. Vincent drove when we hilled the corn and I dropped; I drove part of the time drilling, and Mr. Shafer some.

X Q. 27. What proportion did you drill and what proportion did you check-row in '79?

A. In '79 I suppose we checked two-thirds of it, or near that.

X Q. 28. Could you force the runners into the ground by the feet on the foot lever without using the hand lever?

A. No, sir.

X Q. 29. Do you recollect what the men who came to fix the planter did to it?

A. They fixed something about the chain—that run the drill.

X Q. 30. Do you know what caused them to come?

A. I think Mr. Vincent sent for them or their agent.

X Q. 31. Why did he send for them?

A. The drill wouldn't work right.

X Q. 32. Who planted the corn there in 1880?

A. I planted some, Mr. Nelson some, and, I think, Robert drove some himself.

X Q. 33. When did you come here to this place?

A. Yesterday evening.

X Q. 34. How came you?

A. I came here to testify in this case.

X Q. 35. At whose request?

A. Mr. Scofield's.

X Q. 36. When did Mr. Scofield first see you about it?

A. I got a letter from him.

X Q. 37. When was that?

A. This night a week ago; I don't know what date it was.

X Q. 38. When did you say you left Mr. Vincent's?

A. In the fall of the year 1880.

X Q. 39. What part of the fall?

A. I think it was in September.

537 X Q. 40. Where were you during the winter of '79 and '80?

A. At Liberty township, Jackson county, Ohio.

X Q. 41. When did you leave Vincent's in the fall of '79?

A. After we got the crops laid by, in August or September.

X Q. 42. Was that foot lever on the planter pivoted to anything; if so, to what?

A. I think it was; to the wheel frame.

X Q. 43. To anything else?

A. The end was fastened to the front runner frames.

X Q. 44. Which end was fastened to the front runner frames?

A. Front end of the lever.

X Q. 45. What sort of a connection was it that connected this foot lever to the front runner frames—chains or rigid straps?

A. Straps, I think.

X Q. 46. Whereabouts was this lever pivoted to the runner frame—how far from the front end?

A. I don't remember.

X Q. 47. What was the hand lever pivoted to?

A. I can't describe how it was fastened on.

X Q. 48. How long was the hand lever?

A. Probably it was two foot long.

X Q. 49. Wood or iron?

A. Iron.

X Q. 50. Did you see that planter since the time you left Vincent's in '80 up to the time you came here yesterday?

A. No, sir; I didn't see it from the time I left in 1880 till I came here yesterday.

X Q. 51. Who showed it to you here?

A. Mr. Scofield.

538 X Q. 52. Who else was present when you looked at it here?

A. I couldn't say; there was some in and out that I didn't know.

X Q. 53. Were the attorneys present, Mr. Taggart and Mr. Stem?

A. This gentleman (pointing to Mr. Stem) was in part of the time.

X Q. 54. The planter is not in this room now, is it?

A. It was up in the hall yesterday evening, and I suppose it is yet.

X Q. 55. Not in this room?

A. No; not in this room.

JOSEPH COGAN.

Also DAVID J. POWERS, a witness produced on behalf of defendant, being first duly sworn, testified as follows in answer to direct interrogatories propounded by Mr. STEM:

Q. 1. State your name, age, residence, and occupation.

A. David J. Powers; age, seventy years; residence, Chicago, Illinois, and occupation, mechanical engineer and manufacturer.

Q. 2. State whether you have had any experience in examining patents and machinery for the purpose of contrasting or comparing them and have testified as an expert upon mechanical questions; if so, what?

A. I have had an extensive experience in the manufacture, sale, and use of agricultural machinery, having been both a dealer in such machinery and a farmer as well. I have also invented and patented a number of agricultural machines or applied for patents therefor; have been a constant attendant of a number of the principal agricultural fairs of the country for many years, and have given
539 special attention to the improvements shown in agricultural machinery. I have also been employed as mechanical expert in a considerable number of suits relating to agricultural machinery and implements. I have also been sworn in a great number of litigated cases as a patent expert during the last twenty years.

Q. 3. State whether you have examined reissued U. S. letters patent No. 10155, being the patent sued on in this cause, and whether you understand the same.

A. I have examined said patent and think I understand the same.

Counsel for defendant here offer in evidence the following-named letters patent of the United States:

Certified copies of—

Patent No. 167,612, granted to John Kelly Sept. 14, 1875, for corn-planter, and the same is marked "Defendant's Exhibit Kelly Patent."

Patent No. 96272, granted Scofield & Wise Oct. 26, 1869, for hay-rakes, and the same is marked "Defendant's Exhibit Scofield & Wise Patent."

Patent No. 205,752, granted J. Lane July 9, 1878, for sulky plow, and the same is marked "Defendant's Exhibit Lane Patent."

Patent No. 225,318, granted James W. Atkinson March 9, 1880, for corn-planter, and the same is marked "Defendant's Exhibit Atkinson Patent."

540 Patent No. 162,599, granted J. C. Barlow April 27, 1875 for seeding machine, and the same is marked "Defendant's Exhibit Barlow Patent."

Patent No. 45502, granted Kimball Dec. 20, 1864, for horse-rake, and the same is marked "Defendant's Exhibit Kimball Patent."

Patent No. 177,176, granted J. F. Trader May 9, 1876, for horse hay-rake, and the same is marked "Defendant's Exhibit Trader Patent."

Patent No. 32294, granted H. J. Howe May 14, 1861, for corn-planter, and the same is marked "Defendant's Exhibit Howe Patent."

Patent No. 217,083, granted A. C. Evans July 1, 1879, for corn-planter, and the same is marked "Defendant's Exhibit Evans Patent."

Patent No. 89512, granted E. & E. C. Slosson April 27, 1869, for corn-planter, and the same is marked "Defendant's Exhibit Slosson Patent."

Patent No. 113,552, granted W. A. Myers April 11, 1871, for hay-rakes, and the same is marked "Defendant's Exhibit Myers Patent.",

Q. 4. Have you examined and are you familiar with the various exhibits offered in this case and the testimony that has been taken relating to them?

A. I believe I am.

Q. 5. Please examine said exhibits and compare them with the alleged invention or inventions claimed in the first three claims of reissued letters patent No. 10155, and state what resemblances or differences you find between them and what novel invention you find in said three claims, if any, in view of said exhibits, and give your reasons for any opinions you may express.

541 A. I understand the substance of the invention enumerated in the first three claims of reissued letters patent No. 10155 to be the embodiment in a corn-planter of a certain combination of hand lever and foot treadles that can be used separately or in connection for elevating or depressing the runner portion of the planter, said lever having locking devices by which it can be fixed in any desired position. Such, in brief, is all that I find enumerated or recited in the said three claims. On referring to the state of the art as shown in the several machine exhibits and patents set up by defendant, I find various foot treadles in the different machines, some of them approximating very nearly in their principle and operation, and others corresponding entirely and substantially with those enumerated in the reissued patent exhibit. I will first refer to the treadle and hand lever devices of the Trader patent exhibit. Said patent shows and describes a lever device adapted to be pivoted or fulcrumed between its acting portions and having rigidly connected therewith a hand lever. This treadle and lever device is shown as applied to the parts of a horse-rake, but its operation in effect is substantially identical with the treadle and lever device of complainant's patent reissue. The specification of Trader recites as follows as to the operation of his foot treadle and hand lever (first column of specification): "And the second part of the invention relates to a compound hand and foot lever dumping device, consisting of the parts hereinafter described."

In the second column of the specification the following language occurs: "The operator keeps the rake to its works by a gentle pressure of one foot on pad I, and when he desires to dump
542 the load he changes his foot to pad K, slight pressure upon which, with the assistance of the hand lever F, performs the operation." From the foregoing language it will be clearly seen that his foot treadle was adapted to produce both the elevating and depressing motion without the use of his hand lever, and, further, that he could produce both motions without the hand lever with the foot treadle if he so desired, or he could use both the foot treadle and hand lever simultaneously and together if found desirable. He also had a locking device, consisting of what he terms a straight arm, lettered L in the drawing, and pivoted to his treadle in such manner that it could be carried beyond the center line of motion and thus locked. From the foregoing it will be seen that Trader had the same elements and all of the elements

in his combination that are enumerated in the first three claims of complainant's patent.

Defendant's Exhibit Rake Lever shows this treadle device and hand lever of full working size and in all respects identical with the one shown and described in the Trader patent exhibit. It is obvious to my mind, as a mechanic, that this treadle and lever device could readily and easily be substituted in complainant's machine in place of their treadle and lever device by any competent mechanic skilled in such art without any invention on his part, and that to perform all the necessary functions upon a corn-planter when thus applied as fully and perfectly as does the treadle and lever device of complainants. The locking device might need some little modification, but as locking devices like complainant's are very old and common upon agricultural machines no ordinary mechanic skilled in the construction of such machines would have
543 any trouble in readily adapting any modification necessary to make a proper locking device other than the one shown by Trader. Trader's device, however, was a perfectly good one to lock in a single position, but was not adapted to lock in several different positions; but, as before stated, there would be no invention in adapting any of the ordinary locking devices to lock in any position with the usual arc and latch or other ways.

I will further state that Trader's hand lever is rigidly attached with his treadle as enumerated in this third claim.

The Kimball patent exhibit also shows foot treadles and a hand lever rigidly connected with them in such a manner that the operator can raise or depress his rake at pleasure with the foot treadles only, or with the foot treadles and hand lever in connection. This treadle and lever device of Kimball does not resemble the corresponding devices of complainant in form and appearance so nearly as the Trader, but it shows the same functions, and the device, together with that of Trader, would be as fully described by the language of the claims of complainant's patent as is complainant's own device, including even the locking device of Kimball. Said locking device is different in mechanical construction and to some extent in operation from that of complainant's, but so far as the language of the second claim of complainant is concerned it applies as fully and properly to Kimball's device as to its own.

The patent exhibit of Scofield & Wise for horse-rake also shows and describes a treadle and hand lever device having substantially the raising and depressing functions of complainant's device.
544 The patent exhibit of Lane for the sulky plow also shows foot treadle devices and hand lever adapted to raise or depress the plow in its work and in character and function no way dissimilar in principle to those of complainant. Mechanically the devices differ, but the object is the same, to wit, to bear the plow into the ground more or less according to circumstances, and also to raise it in the ground or entirely out of it, as may be found desirable, exactly the same as complainants aim to depress the runners of their planter according to the mellow or hard character of the soil, or to raise said runners in the ground or out of it entirely.

Thus far I have referred to the horse-rake and plow devices, and, as I shall now take planters in hand, I will remark that the functions and operation of rakes and sulky plows in use are so nearly the same as with corn-planters that I consider the adaptation of the required devices in the one case to be substantially the same as in the other, without the requirement of any new or additional principles or functions. The patent exhibits of Barlow and Atkinson show corn-planters with foot treadles substantially identical in character with those of complainant's patent and adapted, as stated in the respective specifications, for the same purpose, to wit, the raising and lowering of the planting sections of the machines. Barlow, in referring to his invention, states as follows: "The object of the invention is to provide a convenient means of enabling the driver of the planter to lessen or increase the depth of the furrow or to raise the frame, having the furrowing devices clear of the ground."

545 The treadle devices, as shown in the drawings of both patents, would appear to be suitable and competent for the purpose.

Referring to the working machine exhibits I will first notice what is known as the Kelly machine, and I find that machine to show foot treadles for raising and lowering the planting section of the machine, and also a hand lever operating in connection therewith, with a lock and catch stop motion identical in character with that of the complainant's. Thus this Kelly machine, being a corn-planter of the character referred to in complainant's patent, shows "the combination of a foot treadle and a hand lever adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners, substantially as herein set forth." Thus this Kelly machine, some years older than complainant's, clearly and fully shows the elements in combination of the first claim of complainant's patent. It also shows the combination recited in the second claim of complainant's patent, which reads as follows: "A foot treadle for elevating or depressing the runner frame, in combination with a hand lock lever, the foot treadle and hand lever adapted to be used in conjunction for forcing and locking the runners into the ground or lifting and locking them out of the ground, substantially as herein set forth."

The Kelly machine also meets substantially the elements in combination of the third claim of complainants, when the hand lever is rigidly connected with the treadle, as it is capable of being done. It is clearly as rigidly connected with the treadle as is the hand lever of defendant's machine, which I will more fully describe when

546 I reach the defendant's machine, which is known as the "Challenge" planter.

Referring next to the Wright corn-planter exhibits, I find the earliest one, as I understand it, to have foot treadles in connection with a hand lever, and the hand lever having a locking device. Thus this earliest Wright machine contains the elements in combination, substantially, of the first and second claims of complainant's patent; and the second Wright machine is substantially the same as the first one, with the added feature of a rigid connection,

substantially, between the treadles and hand lever. Therefore this machine meets, substantially, all of the elements in combination of the third claim, as well as the first and second, of complainant's patent, and the said claims of complainant's patent apply in their language just as fully and completely to these two earlier machines, to wit, the "Wright planter of 1876" and the "Wright planter," as they are termed, as to the machine contained in the patent exhibit of the complainant.

The Buckeye machine exhibit also clearly and fully shows foot treadles and a hand lever with locking devices adapted for raising and depressing the planting portion of the machine, and coming clearly and fully within the broad language of the three litigated claims of complainant.

Defendant's Exhibit the Evans Corn Drill and Planter shows foot treadles in combination with the hand lever, said hand lever having locking devices, and all adapted for completely and fully performing every stated function enumerated or contained in the first three claims of complainant's patent. Said machine is adapted to be operated by the treadle or by the hand lever when
547 connected with the treadle, which it is adapted to be connected with at the will of the operator, substantially rigid; also adapted to be disconnected from the treadle when desired. Thus this Evans machine appears to clearly and fully contain all of the elements and in the same combinations that are recited in the first three claims of complainant's patent.

The second Evans machine shows a foot treadle adapted to depress the planter, but not to raise it, and also shows a hand lever with locking devices by which the planting device may be raised or lowered; but, inasmuch as it lacks the function in the foot treadle of raising the runners, it does not appear to contain the elements in combination entire of the said three claims of complainant's patent exhibit.

I have now referred to all of defendant's exhibits, both patents and machines, intended to show the prior state of the art; and in summing up I would say that devices coming within the scope of complainant's patent, so far as the claims in litigation are concerned, appear so frequently in the patent exhibits and machines and withal contain so fully the elements in combination of said claims that they would appear to me to limit the invention contained in said patent of anything novel or new down to a very narrow margin, to say the least. Considering the existing state of the art at the date of the reissue of the complainant's invention it would seem to have been reissued with very little regard to existing facts, and the language in enumerating its claims is very singular if not extravagant in character. I would not have referred to the extraordi-
548 nary latitude of the language of the claims if the question had not called for it, and I do not now assume, in any respect, to pass upon the merits or demerits of said claims, but only to express my surprise that such claims were allowed if any proper regard was had to the existing state of the art at the time.

Q. 6. Please look at the corn-planter marked Complainant's Exhibit Challenge Rotary Drop and state whether you find embodied in that machine any of the alleged improvements described and claimed in the first three claims of complainant's reissue No. 10155 in view of the state of the art as illustrated by the exhibits heretofore referred to, and give your reasons for any opinion you may express.

A. On examining said Challenge planter and comparing its devices and combination of parts with the several machines showing the prior state of the art I find it to more nearly resemble some of them than it does the machine described and shown in complainant's reissued patent exhibit. The Challenge machine, it will be noticed, is adapted to have its hand lever unlocked or disconnected from its foot treadle, which is not the fact in complainant's machine. The Kelley and the Evans machines are adapted to have their hand levers measurably or entirely detached from the foot treadles, and to that extent more fully resembles the Challenge machine than the Challenge machine represents the complainant's. The Challenge machine also has its hand lever placed at one side of the seat similar to the Wright machine of '76, and in this respect is dissimilar to complainant's machine. The pivoted treadle of the Challenge machine has considerable resemblance to the pivoted lever of complainant's; but Trader's foot treadle lever is also of the same
549 substantial, identical character, and is older than either of the others. Atkinson also shows a similar pivoted foot treadle older than complainant's. For the foregoing and other differences that I can point out, if desired, I find the Challenge machine to more fully imitate the older machines than the complainant's, and when complainant's invention is limited to its proper dimensions in summing up the claims, as it must be limited by the prior state of the art, in that case I do not discover how the devices of the Challenge machine can be held to in any manner contain the invention of the complainant.

Complainant's counsel desires to state that the question has been written down and read to the witness, and that while reading Mr. Scofield made some remark to the witness which counsel did not understand fully, but to the effect that witness had made a mistake with regard to the location of the hand lever in complainant's patent, and he objects to such interference with the witness.

Q. 7. In answer to question 5 you say, in discussing the Trader patent, that the hand and foot lever can be used jointly to raise or lower the rake or the foot lever could be used alone to perform these functions. I now ask you whether or not in the machine shown in that patent the hand lever could be used independently to raise or lower the rake teeth?

A. Yes, sir; I understand that it can be and intended to so have stated, if I did not.

Q. 8. Please state whether all of the machines and patents to which you have referred in your testimony are now present for your own inspection or for the inspection of complainants.

A. They are all present in this room and have been during my examination.

550 Counsel for defendant offers in evidence the file wrapper and contents in the matter of the patent of Michael Rumstetter No. 231,104, which is received and marked "Defendant's Exhibit File of Complainant's Original Patent."

Also the file wrapper and contents in the matter of the patent of Michael Rumstetter No. 10155, which is received and marked "Defendant's Exhibit File of Complainant's Reissued Patent."

Adjournment to August 27th, 1884.

AUGUST 27TH, 1884—9 a. m.

Examination resumed.

Q. 9. Please examine the certified copy of the original of letters patent No. 10155, namely, patent No. 231,104, which is attached to the files above offered in evidence, and make a comparison between said original and the reissue sued on, and state whether you find the invention covered by the first three claims of the reissue the same as that claimed in the original, and give your reasons for any opinion you may express.

A. On an examination of the original patent exhibit upon which the reissued patent is based I find said original to contain only one claim relating to the devices enumerated in the first three claims of the reissue. This one claim of the original enumerates an elevating and depressing lever with a slot at its forward end pivoted to the main frame at its front end and connected to the runner frame by a bolt through said slot. Those recited parts are put in combination with shaft *d* and the lifting hand lever D, rigidly attached to said shaft, for elevating, depressing, and controlling the runner frame. This shaft, *d*, is the axis of the lever device, and lever D is rigidly attached to it. It is fair to presume this claim was thus
551 limited to the lever with the slotted front end and the hand lever rigidly attached to it by the state of the art, which showed similar levers in all substantial respects, of a prior date.

Atkinson, for instance, showed a foot lever or treadle having its front end slotted identically the same as in the original patent and for the selfsame purpose in a corn-planter, and Trader showed a hand and foot lever, rigidly attached, almost identical in form and character with that of the original patent; but as this slotted lever and a rigid hand lever in connection with it may not have been shown in any of the original patents the Patent Office granted this claim for the combination of these parts, and that is all that claim did grant, to wit, the slotted lever and hand lever rigidly attached through the shaft *d*.

But, for some inscrutable reason not apparent to my senses, the Patent Office in the reissue 10155 expanded this claim into four new claims, in the first two of which they ignore the slotted lever and the rigid hand lever—in other words, they ignore all that was in the claim of the original patent, and in place of it substitute en-

tirely new matter, in language broad and indefinite enough to cover almost any conceivable combination of foot and hand levers and locking devices that had been or would be likely to be applied to use in a corn-planter, sulky rake, or sulky plow. The third claim of the reissue enumerates the rigid connection between the hand and slotted lever of the original, but ignores the slot altogether of the original and broadens the claim in its general scope. I therefore do not find any element of the first claim of the original
552 patent in the three claims of the reissued patent, except that of rigidity, and that not in such other combination of elements as to warrant its validity as embodied in said third claim of the reissue. The reissued claims, as I have before stated, appear to be wholly unwarranted when the basis on which they were reissued, to wit, the first claim of the original and the prior state of the art, is taken into consideration.

Objection.—Complainant's counsel objects to the foregoing answer as irrelevant and impertinent.

Cross-examination by Mr. WOOD:

X Q. 10. I understand you to have in substance testified that the following enumerated alleged prior devices contain practically the foot and hand lever specified in the first three claims of complainant's patent in principle and purpose, to wit: Trader patent, the Lane patent, Kimball patent, the two Wright planters, the Kelly planter and Kelly patent, the Buckeye planter, and one of the Evans planters. Did you intend to be so understood?

A. I intend to be understood that those enumerated machines contain substantially or identically the elements and combinations of the said three claims.

X Q. 11. Is it or is it not true, then, that all of these enumerated devices are practically like each other in the principle of construction and mode of operation of their hand and foot lever or treadles, in your opinion?

A. I regard them as substantially alike so far as they contain the elements enumerated in the claims of complainant. Some of the exhibits did not show a hand lever——

553 Counsel for complainant here interrupts the witness and states that he wishes to confine him to the enumerated devices in the preceding question.

(Witness continues:)

But perhaps those enumerated in your question did show a hand lever. I wish to be understood, however, as finding in some of the machine exhibits all of the functions enumerated in the claims of complainant, and in others nearly all.

X Q. 12. My last question was, Is it or is it not true, then, that all of these enumerated devices are practically like each other in the principle of construction and mode of operation of their hand and foot lever or treadles, in your opinion? Please state if, logically, that question is entitled to an affirmative answer.

A. I repeat, as before, that I find in all of the machines enumerated in the question substantially similar devices of treadles, hand lever, and locking devices; at least sufficiently similar to come within the broad language of the claims of the reissued patent.

X Q. 13. I am not referring to the claims of the patent. I am asking you whether or not, in your opinion, as an intelligent mechanic these respective combinations of hand levers and foot treadles in the various exhibits are practically like each other in construction and operation?

A. The different devices are not practically alike, if by practically is meant to indicate the same form and construction, but are substantially alike in legal and patent parlance, inasmuch as they are adapted to perform the same functions in substantially the same way.

554 X Q. 14. Do you consider two things substantially alike that practically and in the hands of the user one gives satisfaction and the other is not satisfactory?

A. They may still be substantially alike, and for other reasons be satisfactory to one and not to another; and, besides, two things may be substantially alike, and one on account of the advance in the art and without any change of principle. These old machines in this hall show the progress of the art in corn-planters during the last ten years. The object in that seems to have been the same all through, and the principles employed are about the same; but the mechanical adaptations show much simplification and improvement, as is always the case in any line of machinery nowadays.

X Q. 15. And two of these machines may be substantially the same in principle of construction, yet practically different as regards results?

A. They may be in degree. The results may be greater or less in the one or the other, but if they are substantially alike they must be substantially the same in results, one, perhaps, operating better than the other. To illustrate this I will refer to the Wright machine. That has the rigid connection between the wheel and runner sections. That has foot treadles and hand lever with lock, and is capable of performing every motion and function in a more or less imperfect manner of the Challenge machine; but mechanically it is far from being as simple and practical in its construction.

X Q. 16. And yet, speaking of the hand lever and treadles themselves, do you not call them substantially the same in the sense that you have used substantially in this deposition?

555 A. They are substantially the same within the scope of the language of the claims of the reissued patent, as I have repeatedly said. Said claims call for foot treadles without specifying what kind of treadles, and for a hand lever adapted to be used in conjunction with said treadles without limiting itself at all as to the kind of hand lever, and to locking device that will lock the runners into the ground or out of the ground without limiting itself at all as to the specific character of the locking device, except that it shall have the functions of locking the runners into and out of the ground. In the foregoing sense I consider the treadle lever and locking de-

vice of the Wright machine to be substantially the same as that of the reissued patent. If the claims of the reissued patent confined themselves——

Witness is here interrupted by counsel for complainant, who states that he has not asked anything about the reissued patent or its claims, but simply the question whether he considers the Challenge planter substantially the same as the Wright planter, to which he himself has alluded in the last clause of his preceding answer.

(Witness resuming:)

And the sense in which I have used the word "substantially" is the same as it is usually used in comparing devices and means devices similar in function and operation.

It is agreed that the Wright planter, 1876, above referred to is marked in this clause "Exhibit McSherry Planter."

X Q. 17. Take the Exhibit McSherry Wright Planter. Do you or do you not consider the hand levers and treadles there
556 substantially the same as the hand lever and foot lever of the Challenge planter in principle and results?

A. I do, to a certain extent, when broadly considered; but, as I have before stated, the hand lever, on account of the chain connection between the two parts of the machine, cannot be employed to force down the runners into the ground, and only to lift them up. Other than that the two machines compared—operate by means of levers, foot treadle, and locking hand lever—thus employing the same mechanical forces for the purpose, but differently applied mechanically.

X Q 18. Then do you consider these two machines employ substantially the same foot levers and treadles, or otherwise?

A. I consider they employ the same substantially to the extent I stated in my last answer, and beyond that otherwise.

X Q. 19. To the extent stated do you consider those devices practically the same?

A. I do not, if by practically is meant mechanically the same.

X Q. 20. Is it not a fact that no two of the devices are alike in their mechanical details of construction in the machines enumerated in my first cross-question?

A. It is a fact that they are not precisely alike, having been constructed by different parties, at different periods, in different places. As is usually the case, each mechanic has his own notion how he will make a machine, on the same general principle even.

X Q. 21. And yet you consider them all of the same general principle, do you, or why else did you use that term?

557 A. Yes; to a certain extent they are all upon the same general principle, some going farther than others. The object aimed at in all of the machines is the adoption of devices that will enable the operator to force down or raise up the runners or to lock them in any desired position. That is the purpose aimed at in the construction of all the machines and they all employ hand

E. & E. C. Slosson,

Corn Planter.

No. 89512. Patented Apr. 27. 1869.

Fig. 1.

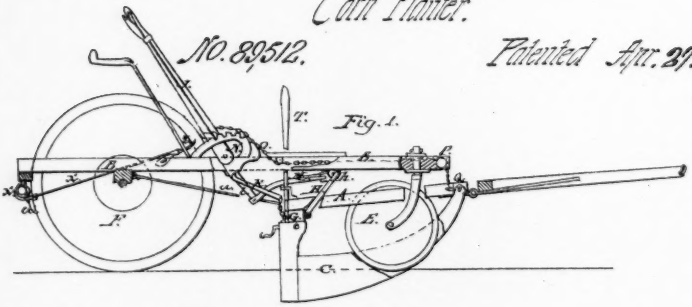
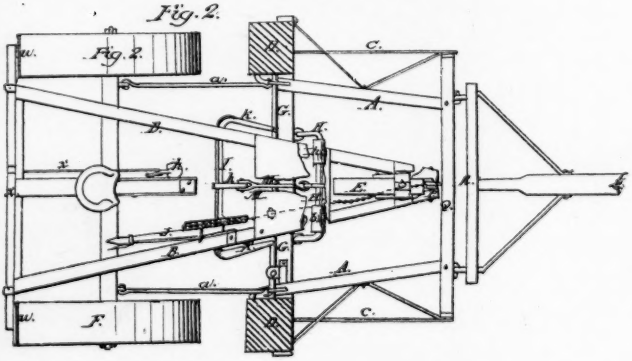


Fig. 2.



No. 359.
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Manuf. Company
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Planter Co.
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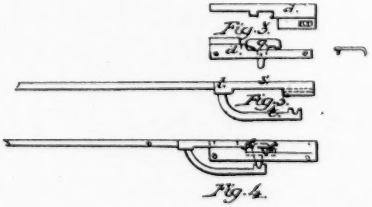


Fig. 4.

Witnesses:
G. A. Marmol
C. Marcus

Inventors:
Eugene Slosson
Edwin C. Slosson
per J. B. Franklin
Attorney

and foot levers in one form or another, and locking devices for the same purpose.

X Q. 22. Do you consider two devices substantially the same when one practically performs its operation with a better or more satisfactory result than the other when this difference is due to differences in construction?

A. I consider them substantially alike if they operate from the same principle, and the fact that one is constructed less perfectly than the other in no way affects their substantially similar character, provided the construction in each case is upon the same principle.

X Q. 23. Then all depends on what you deem the principle?

A. Substantial resemblance depends on the pursuance of the same principle in substantially the same way.

X Q. 24. Suppose you should pronounce two devices from an examination substantially the same in principle of construction and mode of operation and purpose sought, and yet it should turn out that manufacturers, dealers, and users employed the one device and found it useful, and with the other device they became dissatisfied, so that its manufacture, sale, and use was abandoned, would you in such an event yield your judgment, or would you still adhere to your opinion?

558 A. I am not so egotistical but what I would readily yield my opinion on any subject if I saw good and sufficient reasons for it, and if, in the case supposed in the question, the machine that was abandoned was abandoned because incorrect in principle instead of being badly made I might naturally suppose that I had been mistaken; but in a practical experience of more than fifty years of designing, making, and using a great variety of machines and seeing them used I do not now recollect an instance where I have been very materially misled as to the correct principle of a machine.

X Q. 25. Are you the same D. J. Powers who testified as a witness in a shifter case in which I was counsel, respecting the grain drill manufactured by you at Madison, Wis.?

A. I am.

DAVID J. POWERS.

(Here follows diagram marked p. 559.)

560 UNITED STATES PATENT OFFICE.

EUGENE SLOSSON and EDWIN C. SLOSSON, of Vienna, Illinois.

Letters Patent No. 89512, dated April 27, 1869.

Improvement in Corn-Planters.

The schedule referred to in these Letters Patent and making part of the same.

To all whom it may concern:

Be it known that we, Eugene Slosson and Edwin C. Slosson, of the town of Vienna, in the county of Grundy and State of Illinois, have invented certain new and useful improvements in corn-planters; and we do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings, making part of this specification, and to the letters of reference marked thereon, like letters indicating like parts wherever they occur.

To enable others skilled in the art to construct and use our invention, we will proceed to describe it.

Figure 1 is the elevation and

Figure 2 is the plan of the machine.

Figure 3 represents the plates and

Figure 4 the slide of the dropping-device.

Figure 5 is the plan of the dropping device.

The nature of our invention consists in so arranging the parts of the corn-planter that the runners would remain always in a horizontal position, or in a position parallel to the surface of the ground, and the pole would not press on the horse's neck.

It consists, also, in the arrangement of the dropping-device, as also in the mode of attaching scrapers to the machine.

Our machine consists of two independent frames, A A and B B, connected by iron rods, *a a*, hooking into loops.

To the lower frame, A A, runners C C and boxes D D are affixed.

The upper frame, B B, of a triangular shape, is supported in front by caster-wheel E and in the rear by the covering-wheels F F.

The device to raise or lower the frame A A, and with it the runners, consists in the following:

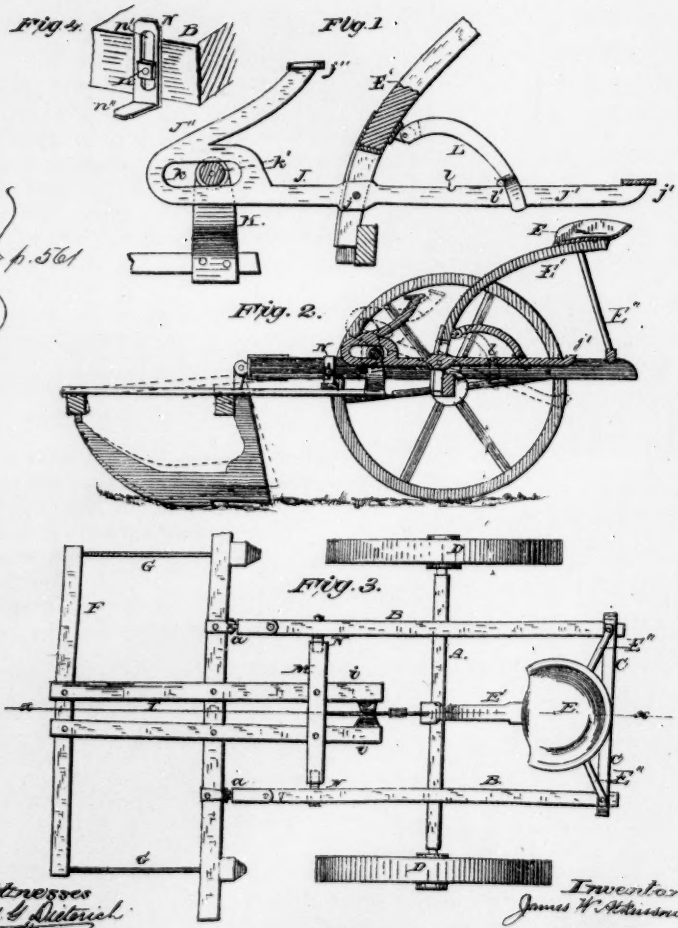
To the cross-piece G of the frame A A is hinged an iron frame, H, the upper bar of which is provided with a roller or rollers, *h h*.

A horizontal iron bar, I, journaled to the frame B B and operated by hand-lever J, is provided with arms, K K, connected by short chains to the cross-piece G of the frame A A, and is provided also with short arm, *l*, coupled with the upper bar of the frame H, by a bent bar, M.

A grooved segment, N, is secured to the bar I and lever J, revolving with them, and a chain, O, secured to the lever J, passes over

J. W. ATKINSON.
Corn-Planter.

No. 225,318. Patented Mar. 9, 1880.



No. 359.
The Farmers Friend Mfg Co.
v.
The Challenge Corn Planter Co.
p. 561

Witnesses
Fred G. Dieterich
B. L. Dieterich.

Inventor
James W. Atkinson
W. B. Richards
atty

the segment N, and to the forward end of the frame B B, where it passes over pulley P, and is secured to the cross-piece Q of the frame A A.

By moving the lever J to the front the frame H is placed into more or less vertical position, pressing the lower frame, A A, down, and pressing the runners into the ground, the slackened chain O allowing the front part of the frame A A to move down also; and, as the whiffletree R is hinged to the cross-piece Q, the pulling of the horses brings the front part of the frame A A down also, so that the runners C C are kept always in a horizontal position or in a position parallel to the ground, at any desired depth.

The reverse of the above-described motion is obtained when lever J is operated in an opposite direction.

Our dropping-device consists of two plates, *d d'*, arranged as represented on Fig. 3, which, by being partially superposed, one over the other, as on Fig. 4, form two cells, *f f*, for the kernels.

Cam *g*, pinned to the under side of plate *d'*, closes one cell after another alternately, being operated by the slide *l*, operated, in its its turn, by the hand-lever T.

The slide *l*, represented on Fig. 5, consists of two arms, one of which, *s*, opens the cells alternately, and admits grain into them from the hopper D, while the other arm, *t*, is connected with cam *g*, and operates the same.

The plate *d* is provided with a slot where bolt *r* is passing, and, therefore, can be adjusted so as to make the cells smaller or larger. The device operates in the best manner, and never cuts the grain.

We attach the scrapers U U to the bar X, hinged to the rear of the frame B B, and operated by rod Y, hinged to said bar, and connected with foot-lever Z, pinned to the frame B B, and operated by the foot of the driver.

What we claim as new, and desire to secure by letters patent, is—

1. The caster-wheel E, when applied to the corn-planter's frame, in the manner substantially as and for the purposes herein shown and described.

2. The raising and lowering device, consisting of frame H, bar I, arm L, and bar M, as also segment N, chain O, and pulley P, or their equivalents, all arranged and operating substantially as set forth.

3. The dropping-device, consisting of plates *d d'*, cam *g*, and slide *l*, arranged and operating as herein described and specified.

4. The manner of attaching scrapers U U to the machine, and operating the same, substantially as set forth.

EUGENE SLOSSON.
EDWIN C. SLOSSON.

Witnesses:
A. R. NEWPORT,
JOSEPH G. NELSON.

(Here follows diagram marked p. 561.)

562 UNITED STATES PATENT OFFICE.

JAMES W. ATKINSON, of Moline, Illinois, assignor to Deere & Mansur Company, of same place.

Corn-Planter.

Specification forming part of Letters Patent No. 225,318, dated March 9, 1880; application filed December 6, 1879.

To all whom it may concern:

Be it known that I, James W. Atkinson, of Moline, in the county of Rock Island and State of Illinois, have invented certain new and useful improvements in corn-planters; and I do hereby declare that the following is a full, clear, and exact description of the invention, which will enable others skilled in the art to which it appertains to make and use the same, reference being had to the accompanying drawings, and to letters of reference marked thereon, which form a part of this specification, in which—

Figure 1 is an enlarged side elevation of the elevating and depressing lever and adjacent parts of the machine. Fig. 2 is a sectional view in the line *x x* in Fig. 3. Fig. 3 is a top-plan view of a corn-planter embodying my invention. Fig. 4 is a perspective view, enlarged, of one of the adjusting-stops.

This invention relates to improvements in corn-planters of that class in which a rear frame is hinged to a forward frame, the rear frame mounted on wheels and supporting the driver's seat, and the front frame generally supported on runners and carrying the seed measuring and discharging devices, and in which a lever is journaled to the rear frame, and arranged so that the driver may operate it with his feet to raise and lower the forward frame; and the invention consists, essentially, in the combination, with the forward and rear frames of a corn-planter hinged or pivoted together, of the slotted lever having the rear end foot plate or plates and forward recurved or upwardly and rearwardly bent end with foot plate or plates, said lever being hinged or pivoted at or near its center to the rear frame, with its forward end connected to an extension of the forward frame for elevating or depressing said frame.

It further consists in the combination, with the forward and rear frames of a corn-planter hinged or pivoted together, of the notched elevating and depressing lever, hinged or pivoted at or near its center to the rear frame, with its forward end connected to an extension of the forward frame and recurved or bent upward and backward, and the detent pawl hinged at its upper end to the seat-supporting frame, and its lower end adapted to engage with said notched lever holding the forward frame in an elevated position.

It finally consists in the combination, with the forward and rear frames of a corn-planter hinged or pivoted together, of the elevating and depressing lever hinged or pivoted to the rear frame, the central and rear extension-bars of the forward frame, connected to

said lever and provided with a transverse bar, and the vertically-adjustable plates secured to the rear frame near the front end thereof for regulating the depth of planting, all as will be hereinafter fully described.

Referring to the drawings by letters, letter A represents the axle; B B, the side bars, and C, the transverse bar, forming the rear frame, mounted on wheels D, and supporting a driver's seat, E, on a curved bar, E′, and standards E″. F is the forward frame, with runners G and seed-boxes and central bars, I, having their rear ends, *i*, extending in rear of the forward frame, F. The front and rear frames are hinged to each other *a a*, as shown in the drawings.

J is a lever, preferably pivoted at its midlength at *j* in a slot in the seat-supporting bar E′, and provided at its rear end, J′, with foot-plates *j′*. The forward end, J″, of the lever J is bent upward and backward, as shown at Figs. 1 and 2 of the drawings, and provided at its rear end with a foot plate, *j″*. In the angle formed by the bend in the lever J a slot, *k* is formed, which receives a shaft, *k′*, carried in the upper ends of and between standards K, which project upward from the rear ends of the extension-pieces *i*.

L is a detent-pawl, hinged at its upper end to the rear side of the bar E′, and its lower end forked so as to retain it in working position astride the rear end of the lever J.

M is a transverse bar secured to and near the rear ends of the extensions *i*.

N N are plates secured one to the inner side of each bar, B, by a bolt, *n*, which passes through a slot, *n′*, in each plate N, and by means of which said plates may be adjusted vertically in the evident manner. The lower end, *n″*, of the plates N are turned inward,
563 so that the bar M will strike them when it is lowered sufficiently, and thereby limit the extent to which the forward frame may be lowered, and provide means for gaging the depth of planting by adjusting the height of the plates N on the bars B.

In operation the driver may raise the forward frame by pressing with his feet on the rear end of the lever J, and when desired he may depress the rear end of said lever sufficiently to raise the runners G entirely above the ground, when the lower end of the pawl L will engage with a notch, *l*, in the upper side of the lever J and hold the forward frame in an elevated position, as shown by dotted lines at Fig. 2 of the drawings, until released by the driver placing his foot beneath one of the arms *l′*, which project from the side of the pawl L, and lifting said pawl out of the notch *l*.

The driver may press the runners G into the soil with great force, when desired, by placing his feet on the foot-plate *j″* on the forward end, J″, of the lever J.

I am aware that corn-planters in which a rear frame mounted on wheels is hinged to a forward frame carrying the seeding devices, mounted on runners, and in which a bent or curved lever, hinged or pivoted to the rear frame and connected to the forward frame, is used to raise and depress said forward frame, and also devices for regulating the depth of planting, are old, and such I do not wish to be understood as claiming, broadly, as my invention.

Having thus described my invention, what I claim as new, and desire to secure by letters patent, is—

1. In a corn-planter, the combination, with the forward and rear frames hinged or pivoted together, of the slotted lever J, having the rear end foot plate or plates, *j'*, and forward recurved or upwardly and rearwardly bent end, J'', with foot plate or plates *j''*, said lever being hinged or pivoted at or near its center to the rear frame, with its forward end connected to an extension of the forward frame, substantially as and for the purpose herein shown and described.

2. In a corn-planter, the combination with the forward and rear frames hinged or pivoted together, of the notched elevating and depressing lever J, hinged or pivoted at or near its center to the rear frame, with its forward end connected to an extension of the forward frame and recurved or bent upward and backward, and the detent-pawl L, hinged at its upper end to the seat-supporting frame, and its lower end adapted to engage with said notched lever, substantially as and for the purpose herein shown and described.

3. In a corn-planter, the combination, with the forward and rear frames hinged or pivoted together, of the elevating and depressing lever J, pivoted to the rear frame, the central and rear extension-bars, I I *i i*, of the forward frame, connected to said lever J and provided with a transverse bar, M, and the vertically-adjustable plates N N, secured to the rear frame, near the front end thereof, substantially as and for the purpose herein shown and described.

In testimony that I claim the foregoing as my own I affix my signature in presence of two witnesses.

JAMES W. ATKINSON.

Witnesses:
A. B. DICK.
J. M. WATERS.

(Here follow diagrams marked pp. 564, 565, & 566.)

567 UNITED STATES PATENT OFFICE.

JOHN LANE, of Chicago, Ill., assignor of one-half his right to the Chicago Plow Manufacturing Company, of same place.

Improvement in Sulky-Plows.

Specification forming part of Letters Patent No. 205,752, dated July 9, 1878; application filed January 15, 1878.

To all whom it may concern:

Be it known that I, John Lane, of Chicago, in the county of Cook and State of Illinois, have invented a new and useful improvement in sulky-plows, which improvement is fully set forth in the following specification and accompanying drawing, in which—

Figure 1, sheet one, is a rear view of my improved sulky-plow. Fig. 2, sheet 1, is a top view of same, having the seat and a part of

2 Sheets—Sheet 1.

J. LANE.
Sulky-Plow.

No. 205,752. **Patented July 9, 1878.**

No. 359.
The Farmers Friend Mfg. Co.
v.
Challenge Corn Planter Co.
p. 565

Fig. 1.

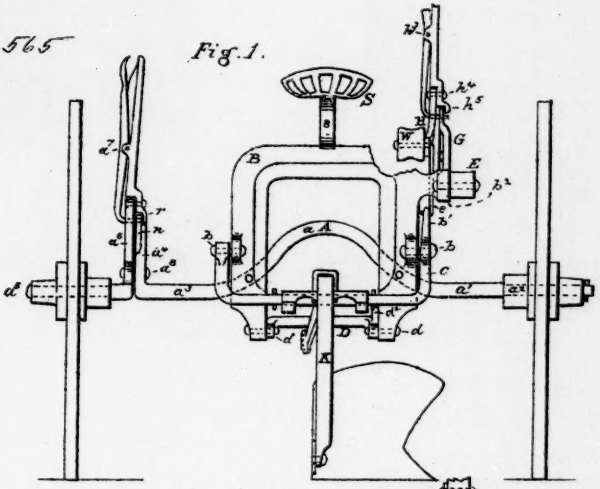
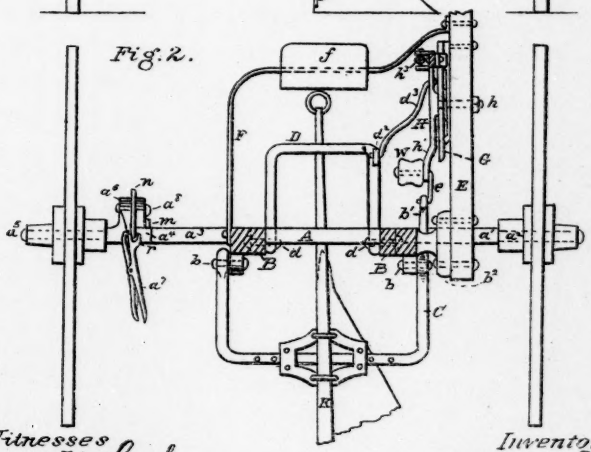


Fig. 2.



Witnesses
Myron H. Church.
G. H. Hull

Inventor.
John Lane

2 Sheets—Sheet 2.

J. LANE.

Sulky-Plow.

No. 205,752. Patented July 9, 1878.

No. 397.
The Farmers Friend Mfg. Co.
v.
Challenge Corn Planter Co.
p. 566

Fig. 3.

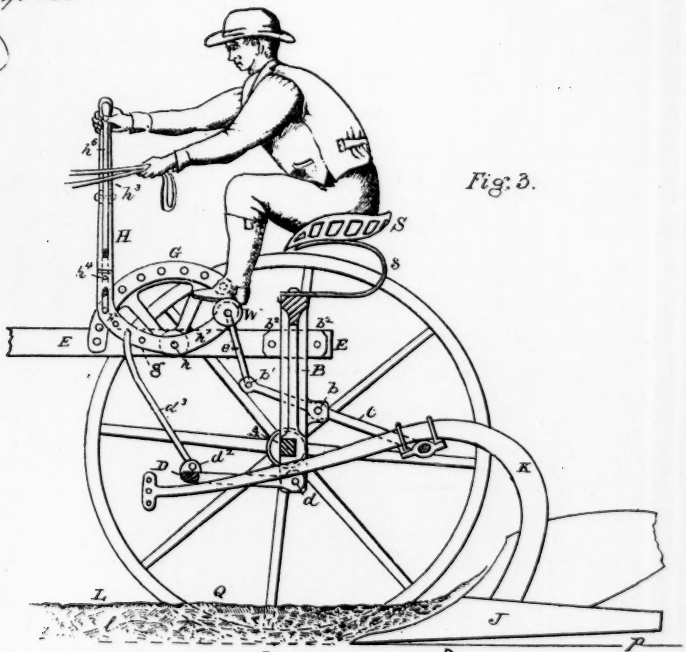
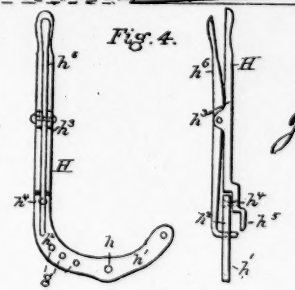


Fig. 4.



Witnesses.
Myron H. Church
J. A. Hurd

Inventor.
John Lane

the arch removed. Fig. 3, sheet 2, is a side view of same, having the front side removed to a line perpendicular from the seat down. Fig. 4, sheet 2, is a view of my improved lifting-lever detached, and showing both a front and side view.

Like letters of reference refer to like parts in all the drawings.

My invention relates to sulky-plows; and consists in providing an axle, supported on wheels and carrying one or more plows, with the peculiar parts and arrangements of parts combined in construction of my improved sulky-plow, as is hereinafter set forth and shown.

A is the axle, which is of peculiar construction, and made of a single bar, bent, forming the elevated center a, and extending both to the right, a^1, and left, a^3, and the right extension a^1 having a wheel-arm, a^2, formed thereon, and the left extension a^3 having its end a^4 bent upright, and to which is attached a rotating wheel-arm, as shown.

B is the arch, which is attached to the axle A, and supports the tongue end E, the carrier D, the support C, and the foot-rail F, as shown. The arch B is attached to the axle near the bends in the axle A, and extends below the axle, as shown.

C is the support, which is formed of one piece of iron, bent somewhat in U shape, and connected with pivots $b\ b$ to the arch B above the axle A, and, extending rearward, supports the plow-beam K, as shown.

One arm of the support C extends forward, as at b^1, beyond the arch B, as a lever, to assist in lifting the rear part of the support C and plow thereto attached, as shown.

D is the carrier, which is formed of one piece of iron, bent somewhat in U shape, and both arms thereof are attached by pivots to the arch B, below the axle A, on the pivot-centers d, and the carrier extends forward unattached on the top of and near the end of the beam K, as shown.

At one corner of the carrier D is formed a perforated lug, d^2, in which a connecting-rod, d^3, is secured, connecting the carrier D with the hand-lever H forward of the fulcrum in the hand-lever, as shown.

E is the tongue or rear end thereof, which is rigidly secured to the arch B with bolts through the ears b^2. The tongue extends forward and supports the segment G, the hand-lever H, and the foot-rail F.

F is the foot-rail and brace, which is attached at one end to the arch B, and extends forward, and is curved obliquely to the tongue end E, to which it is rigidly attached, forming a brace from the forward end of the tongue end E to the far-off side of the arch B.

f is a foot-board attached to and near the center of the foot-rail F, as shown.

G is the perforated segment, which is attached to the side of the tongue end E some distance forward of the arch B.

H is the lifting hand-lever, which is bent curved somewhat in L shape, and near the center of the curve is the fulcrum, attached to and pivoted on the center h of the segment G, with the short arm h^1 extending rearward, and the long arm h^2 extending first forward

and then curved upward, and ending in an upright portion, h^3. The short arm h^1 and the center curved part and that part extending forward to just beyond the segment G is one separate piece, separate from the upright portion h^3, and the two are bolted together at h^4. The arm h^3 extends below the bolt at h^4, and has formed thereon the offset-slide guard h^5, resting loosely against the back of the segment G, keeping the lever H close to the segment G when moved back and forth.

The long arm h^3 carries a side lock-lever, h^6, having a pin at its bottom end, striking through a perforation in the lever H into one of the perforations in the segment G, locking the lever H to the segment G, when, by grasping the top end of arm h^3 and the
568 side lever h^6, drawing them together, the pin is drawn out and the lever H moved as desired. At the rear end of the arm h^1 is a perforation, supporting a rod-link, e, which connects in a perforation in the end of the extension b^1 of support C, as shown.

Forward of and between the fulcrum of the lever H and the rim of the segment G are perforations g in the lever H, to receive and support the rod-link d^3, connecting with the corner of the carrier D, as shown; and the connecting-rod d^3 may be adjusted by moving it to other perforations g in the lever H, so as to regulate the carrier D up and down as to its position relatively to the rear part of the support C, as shown.

The advantage of having the lever H bent in L shape (over a straight lever) is that in its operation it requires the heaviest power pull at starting to lift the plow, and the power is gradually decreased, until finally slight power is wanted as the plow reaches its highest elevation, for the reason that the short arm h^1 in its travel on the arc of a circle at first moves the plow rapidly, and then slowly, until the fulcrum center h, short arm h^1, rod-link e, and the forward end of extension b^1 are on or nearly on a straight line from the fulcrum-center h on the tongue downward to the extension b^1, while the long arm h^3 extends horizontally rearward by the side of and in easy reach of the operator.

The tongue end E, or a tongue bolted to the tongue end, extends forward between the horses to the neck-yoke. A seat, S, provided with a spring, s, is attached to the top of the arch B, as shown.

The rotating wheel-arm a^5, with its holder a^6 and adjusting-lever a^7, is of peculiar construction. The wheel-arm a^5, holder a^6, and the bar connecting them together are of one piece, a single bar bent, one end forming the wheel-arm a^5, the other end forming the upright holder a^6, and connected together by the bar extending horizontally from one to the other, and is pivoted on a pin a^8, at the lower corner of the holder a^6, as shown, connecting the holder a^6 to a box, m, on the forward side of the extension a^3 of the axle A. On the top of the upright a^4 is a segment-bar, n, which is perforated with several holes; and an adjusting-lever, a^7, locking into the bar n, adjusts the wheel on the wheel-arm a^5 up and down. The adjusting-lever a^7 is bolted to the top end of the upright-part holder a^6, and has a side lever-lock, locking into perforations in the segment-bar n; also, has an extension, r, by the side of the segment-bar n,

keeping the parts close together. The upright part a^6 has support by resting against the box m and segment-bar n, and the wheel-arm has support by resting against the upright part a^4, resisting down weight and forward pull of the plow and frame.

The rod-link e is of novel construction, and consists of a rod of iron bent at both ends at right angles, and one end (a short bend) is secured in the perforation in the end of the extension b^1. The other end (a longer bend) passes through the perforation in the end of the short arm h^1 of lever H, and extends through the perforation in the short arm h^1 a sufficient distance for a foot-rest, on which I place a foot-roll, w, as shown, whereby the operator, having his foot resting on the roll w, throws his weight on the foot-rest when pulling backward on the lever H, assisting with the foot in working the lever and lifting the plow.

In operation, the plow is adjusted at work, carrying the plow with its load of furrow-slice on the wheels, by so adjusting the carrier D with the support C as to hold the point of the plow-point down and working below the land-side bar, as shown in Fig. 3, in which the line L shows the top of the furrow-slice l and the line P shows the bottom of the furrow; and J is the land-side bar of the plow; and the position of the plow shows how the rear end of the land-side bar J is carried above the bottom of the furrow, and the plow with the furrow-slice carried on the wheels while the plow-beam K is held in position by the support C and carrier D, as shown.

In the drawing, Fig. 3, the wheel Q is shown as working in the last furrow before the furrow just turning by the plow, and the foreground not shown, so as to show the plow at work, with its load of furrow-slice being carried, as shown, when the land-side bar J does not rest on the bottom of the furrow.

The operator, sitting in the seat S, with his foot resting on the foot-roll w, throws his weight on his foot, while with his hand he unlocks the lever H and pulls back one or more stops, thereby lifting the plow squarely up. The rod d^3 lifts the carrier D equal in distance to what the lever-arm h^1, rod e, extension b^1; and support C have lifted the rear part of the plow, and the plow now works at a less depth. The plow-beam not being attached to the carrier D, other than resting against it, the plow endeavors to seek a level work of the land-side, and is prevented from so doing by the carrier D holding the end of the beam down, while the support C supports and holds the plow from working any deeper. The operator continues to pull lever H to raise the plow from the ground for turning corners and going about the field.

The width of plowing is regulated by the draft-clevis, as in ordinary plowing.

The lever H operates to control the depth of plowing and lift the plow above the ground.

The rotating wheel-arm a^5 regulates the winging of the plow or leveling of the plow with the depth-cutting; and the carrier D and support C regulate and control the pitch and depth of cutting, and insure the plow working point down and being carried on the wheels, as shown.

Having thus described my invention and the operation of my improved sulky-plow, I claim in a sulky-plow carrying one or more plows—

569 1. The lever H, rod d^3, and carrier D, arranged and operating, as shown, with rod-link *e*, extension b^1, and support C, all arranged and operating substantially as shown, and for the purpose set forth.

2. The lever H, carrying the lock-lever h^6, with segment G, connected therewith, as shown, and operating with rod d^3 and carrier D, also with rod-link *e*, foot-roll *w*, extension *b'*, and support C, all arranged and combined substantially as shown, and for the purpose set forth.

3. The carrier D, bent and formed as shown, and the ends of the arms pivoted on the pivot-centers *d d*, and extended forward of the axle to near the forward end of the plow-beam, where its forward end rests on the top of the plow-beam, and rod d^3, and lever H, all arranged and operating substantially as shown, and for the purpose set forth.

4. The lever H, rod-link *e*, extension b^1, and support C, arranged as shown, and having the foot-roll *w* attached to the rod-link *e*, and all arranged and operating substantially as shown, and for the purpose set forth.

5. The rod-link *e*, connecting the short arm h^1 of the lever H and extension b^1, and the top end of rod-link *e*, extending and supporting the foot-roll *w*, as shown, all arranged and operating substantially as shown, and for the purpose set forth.

JOHN LANE.

Witnesses:
E. G. SHUMWAY.
G. H. HULL.

570 [Endorsed:] Schofield & Wise. 96272. Oct. 26th, 1869. Horse rakes. Def't's Exhibit "Schofield & Wise Patent." Fred. W. Stevens, notary public & acting ex'r.

(Here follows diagram marked p. 571.)

572 & 573 UNITED STATES PATENT OFFICE.

SILAS C. SCHOFIELD and A. JUDSON WISE, of Chicago, assignors to Silas C. Schofield and William D. Andrus, of Rockford, Illinois.

Letters Patent No. 96272, dated October 26, 1869.

Improvement in Horse-Rakes.

The schedule referred to in these Letters Patent and making part of the same.

To all whom it may concern:

Be it known that we, Silas C. Schofield and A. Judson Wise, of Chicago, in the county of Cook and State of Illinois, have invented

Schofield & Wise.

Horse Rake.

No. 96272 Patented Oct. 26, 1869.

Fig: 1.

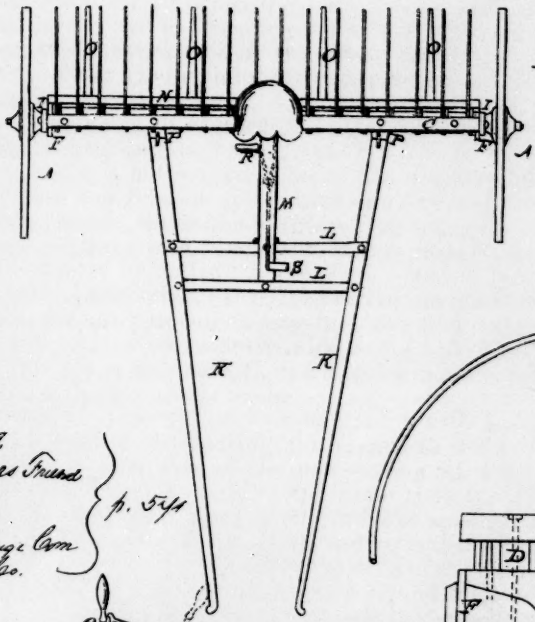
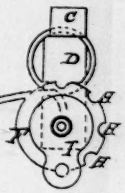


Fig: 3



No. 359.
The Farmers Friend Mfg. Co.
&
The Challenge Corn Planter Co.
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Fig: 4.

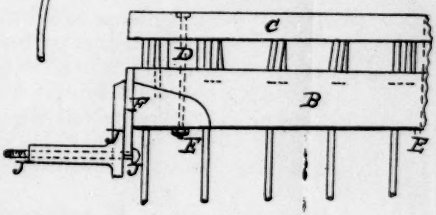
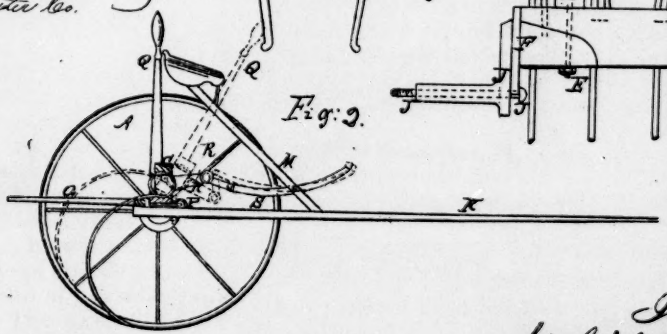
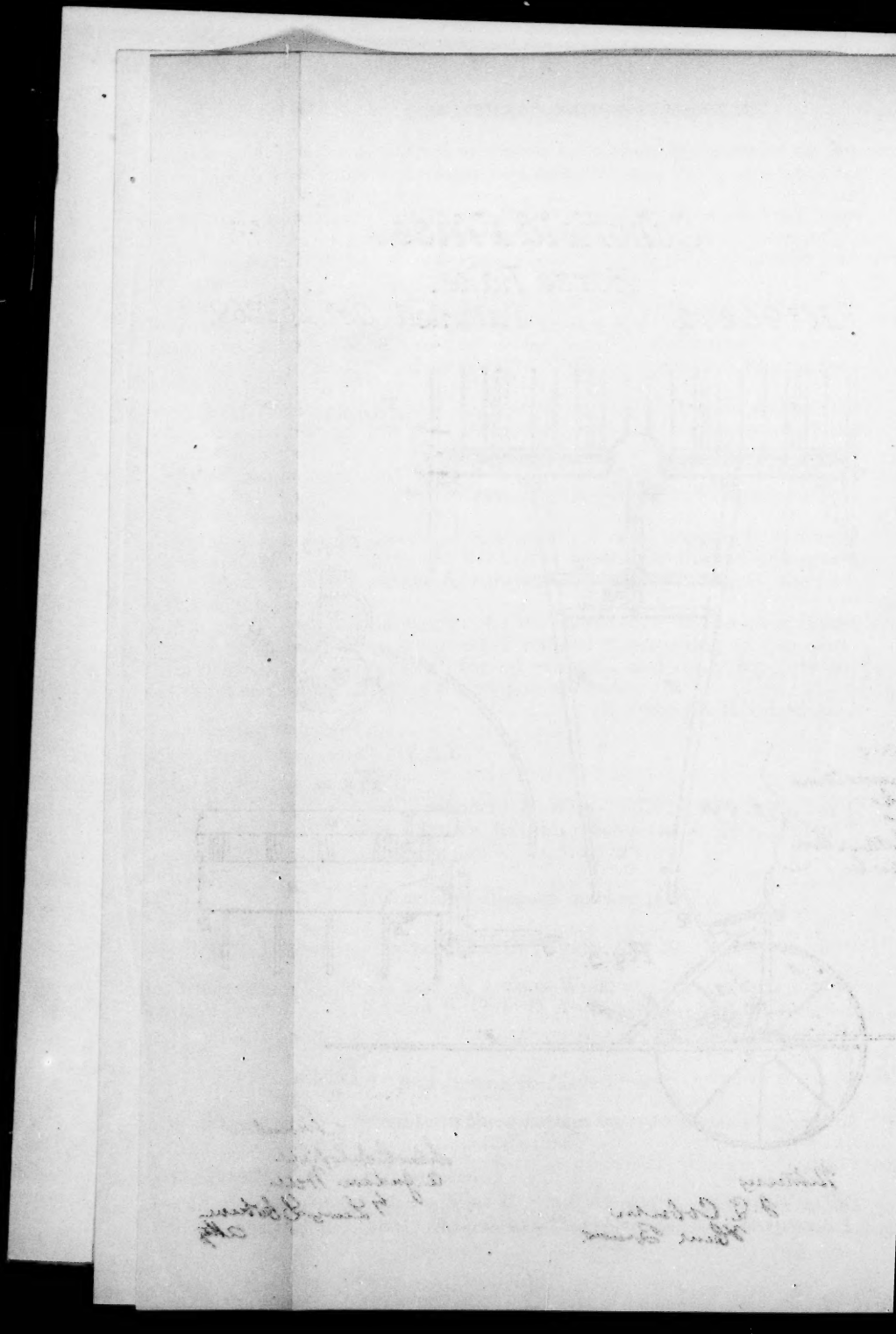


Fig: 2.



Witnesses
J. L. Coburn.
Hiram Brown.

Inventor
Silas C. Schofield
A. Judson Wise
by Lewis L. Coburn
Atty



a new and useful improvement in horse-rakes, and we do hereby declare the following to be a full, clear, and exact description of the same, reference being had to the accompanying drawings and the letters and figures marked thereon, which form a part of this specification and in which—

Figure 1 represents a top or plan view of the rake;

Figure 2, a transverse vertical sectional view;

Figure 3, an end elevation of the axle and cap, and

Figure 4, a side elevation of a portion of the same.

The nature of our invention consists in the special device shown and described for securing the teeth to the rake, and also in the special device used in attaching the wheels to the rake.

To enable those skilled in the art to understand how to manufacture and use our invention we will proceed to describe the same with particularity.

The same letters of reference refer to the corresponding parts in the different figures.

Our rake is a sulky-rake, A being the ordinary wheels used on sulky-rakes and B is the axle, which also serves as the rake-head or the cross-piece to which the teeth are attached.

There are transverse notches cut in this piece B, as shown in Fig. 2 and indicated by dotted lines in Figs. 3 and 4, in which the coil part of the rake-tooth is placed, the end of the rake-teeth being bent so as to extend perpendicularly into the said axle, as indicated. These transverse notches are as wide as the coil of the tooth.

There is also a cap-piece, C, in which there are similar transverse notches for the coil of the teeth.

This cap-piece is held in place by the blocks D and bolts E.

By this method of securing the rake-teeth the coil is kept from spreading by each side of the coil resting in notches just wide enough to receive them, and at the same time there is nothing in the coil to prevent it from giving all the spring there is in the metal, just as much as if the tooth had no fastening.

There are plates, F, attached to the ends of the axle B, in the circumference of which there are notches, H, and there are also crank-axles, I, attached to the axle B, through the spindle of which the bolt J passes, one end of the bolt resting in one of the notches in the plate F, the nuts which secure the wheels A being screwed to the other end thereof.

By placing the bolts J in different notches, H, in the plate F the height of the axle B is regulated.

K represents the thills and L cross-pieces to which the seat-support M is attached.

There is a cross-piece, N, attached to the rear end of the thills, and O are guards extending out from the cross-piece N to clear the rake-teeth of hay when they are elevated, as hereafter described.

The axle B is hinged to the thills by the hinges P P, and is turned on said hinges to raise the teeth to discharge the windrow of hay.

Q is a lever attached to the axle and extending up near the driver's seat for the purpose of turning the axle to raise the teeth, and there

is also a treadle-lever, R, attached to said axle, whereby the operator can turn the axle on its hinges and discharge the hay from the rake with his foot.

There is also a treadle-lever, S, which has its bearing in the seat-support M and which is attached to the end of the treadle-lever R.

There is a joint, T, in the treadle-lever S, which, when the rake is thrown into the position indicated by the blue lines in Fig. 2, can be made to assume the position also shown for it by the blue lines, when it locks the rake in that position, with the rake-teeth raised from the ground, when the sulky can be readily driven from or to the field.

But the principal object of the treadle S is to enable the operator to press the rake-teeth to the ground with his foot. By placing his foot upon the treadle S he presses the rake-teeth to the ground, and by placing it upon the treadle R he can raise the teeth from the ground to discharge the hay.

Having thus fully described the construction and operation of our invention, what we claim and desire to secure by letters patent is—

1. The transverse slots or notches in the axle B and cap C in combination with the coil of the rake-tooth for the purposes of securing the rake-teeth, substantially as and for the purposes specified.

2. The combination of the plates F, provided with the notches H, the crank-axle I, and bolt J, when constructed and arranged substantially as and for the purposes specified.

SILAS C. SCHOFIELD.
A. JUDSON WISE.

Witnesses:
J. L. COBURN.
L. L. COBURN.

574 DEF'T'S EXHIBIT KIMBALL PATENT. Fred. W. Stevens, Notary Public & Acting Ex'r.

(Here follows diagram marked p. 575.)

576 UNITED STATES PATENT OFFICE.

GEORGE KIMBALL, of Springfield, Vermont.

Improvement in Horse-Rakes.

Specification forming part of Letters Patent No. 45502, dated December 20, 1864.

To all whom it may concern:

Be it known that I, George Kimball, of Springfield, in the county of Windsor and State of Vermont, have invented a new and improved horse-rake; and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others

G. KIMBALL.

Horse Rake.

No. 45,502. Patented Dec. 20, 1864.

No. 359.
The Farmers Friend
Manf'g. Co.
v.
The Challenge Corn
Planter Co.
p. 575

Fig: 1.

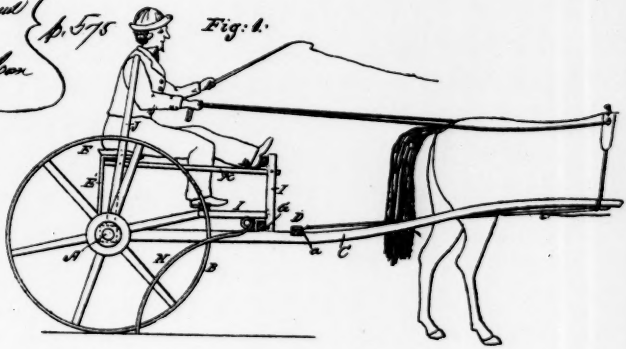
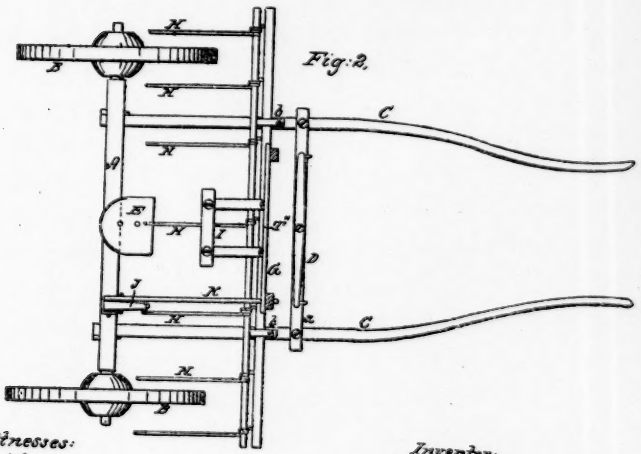


Fig: 2.



Witnesses:
Henry J. Morris
C. L. Topliff.

Inventor,
Geo Kimball
per Munn & Co.
Attys.

skilled in the art to make and use the same, reference being had to the accompanying drawings, forming part of this specification, in which—

Figure 1 is a side view of my invention; Fig. 2, a plan or top view of the same.

Similar letters of reference indicate like parts.

This invention consists in having the rake attached to the thills in front of the wheels, and having hand and foot levers arranged and applied in such a manner that the driver, while on his seat and when the rake is at work, will have perfect control over the latter, so as to keep it in proper working position and allow it to yield or give to conform to the inequalities of surface over which it may pass, and also readily raise it, in order that it may discharge its load.

A represents an axle having a wheel, B, at each end of it; and C C are thills, attached to the axle, and connected by a cross-bar, *a*, to which the whiffletree D is attached.

E is the driver's seat, at the upper end of a standard or support, F, which is secured to the axle; and G is a rake-head fitted in bearings *b b* on the thills C C, in front of the wheels B B, the rake-head being allowed to turn freely in its bearings.

H represents the rake-teeth, which are of the usual curved form, constructed of wire and attached to the rake-head G in the ordinary manner.

To the rake-head G there are secured two lever-frames, I I′, which are at right angles to each other, as shown clearly in Fig. 1, the frame I being in a horizontal and the frame I′ in a vertical position when the teeth H are at work.

To the axle A the lower end of the lever, J, is attached, and this lever is connected by a rod, K, with the lever-frame I′. The lever J extends upward by the side of the driver's seat E, so as to be within convenient reach of the driver.

As the machine is drawn along the driver has his feet acting upon the frames I I′, and the rake is operated or controlled thereby, so as to be kept to its work or raised in order that it may discharge its load. The lever J may also be manipulated at any time in order to assist in the operation.

The device is extremely simple and efficient, there being but few parts, and none which are liable to get out of repair.

I claim as new and desire to secure by letters patent—

The two lever-frames I I′, attached to the rake-head G, as shown, in combination with the lever J, attached to the axle A and connected to the frame I′ by the rod K, when said parts are used with a rake attached to the thills C C in front of the wheels B B, and all arranged to operate substantially as and for the purpose set forth.

GEORGE KIMBALL.

Witnesses:

SAM'L W. PORTER.

SAM'L STEELE.

[Endorsed:] G. Kimball. 45502. Dec. 20, '64. Horse-rake.

577 DEF'T'S EXHIBIT TRADER PATENT. Fred. W. Stevens, Notary Public & acting Ex'r.

(Here follows diagram marked p. 578.)

579 UNITED STATES PATENT OFFICE.

JAMES F. TRADER, of Xenia, Ohio.

Improvement in Horse Hay-Rakes.

Specification forming part of Letters Patent No. 177,176, dated May 9, 1876; application filed April 1, 1876.

To all whom it may concern:

Be it known that I, James F. Trader, of Xenia, in the county of Greene and State of Ohio, have invented certain new and useful improvements in horse hay-rakes, of which the following is a specification:

The first part of the invention relates to the manner of fastening the teeth, and consists in the provision of an adjustable tooth-socket attachment, having a curved base to rest on an axle with an upper curved face, whereby the position of the teeth is regulated by simply moving the attachment back or forward; and the second part of the invention relates to a compound hand and foot lever dumping device, consisting of the parts hereinafter described.

Figure 1 is the perspective view of portions of a rake embodying both parts of the invention. Fig. 2 is an enlarged perspective view of the tooth-fastening attachment, when made to allow the point of the tooth to have a loose motion, and Fig. 3 is a similar view of the same device when made for a fixed tooth.

P is the axle, the upper side of which is made circuline. B is the tooth attachment, provided with a socket, *b*, for the tooth to rest in, the groove being sufficiently deep and horizontal at the back to allow the tooth C to play vertically in it, and circular at the bottom to fit the axle. It is provided with a slot, D, through which a bolt from the axle projects, and by means of a nut is adjusted to any desired position, and there secured, the object of such adjustment being to regulate the points of the teeth to suit the work. A is a similar attachment, but intended to hold the tooth without vertical play, and having its rigid end turned up instead of being horizontal. Both are shown in Fig. 1, and in practice they may be used together, or either may be used separately. E is the operator's seat; N, a cross-bar; H, a bracket, to which the lever is pivoted, and against which the lower end of the hand-lever F, or the bracket-projection *i* under it, rests when the rake is in operation. M is a goose-neck bracket, securely attached to the axle P, and to which the straight arm L is pivoted. G is a curved arm, pivoted to L at one end, and to the bracket H at the other, and provided with two foot-pads, I and K.

J. F. TRADER

HORSE HAY-RAKE.

578

No. 177,176. Patented May 9, 1876.

Fig. 1

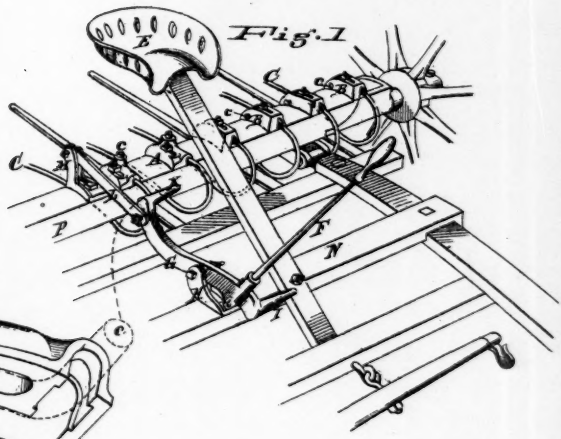


Fig. 2

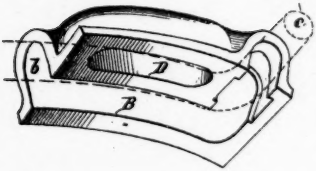
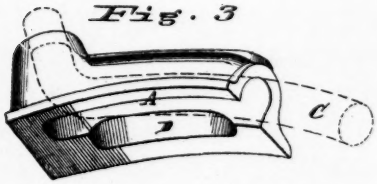


Fig. 3



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The Farmers Friend Mfg. Co.
The Challenge Com. Rake Co.
} p. 578

Inventor
James F. Trader.
by Wood & Boyd
Attorneys.

Attest
Jas. S. Boyd
John Ogara.

J. KELLY.

Corn-Planter.

No. 167,612. Patented Sept. 14, 1875.

No. 359.
Farmers Friend
Manf'g Co.
v.
Challenge Corn
Planter Co.
p. 581

Fig. 1.

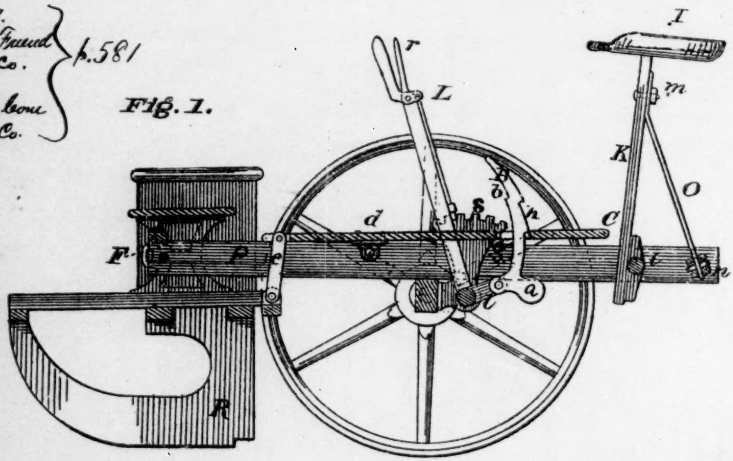
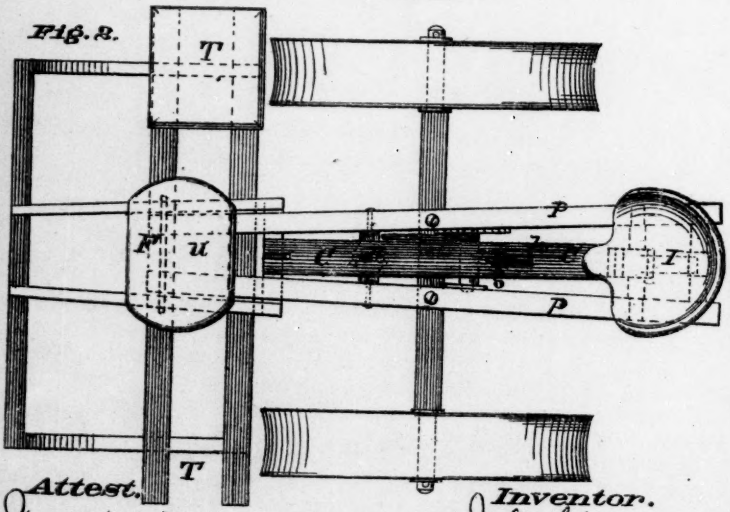


Fig. 2.



Attest.

Wm. S. Bates
Jeremiah F. Ewohig.

Inventor.

John Kelly
by Hatch & Parkinson
Attys

The operator keeps the rake to its work by a gentle pressure of one foot on pad I, and when he desires to dump the load he changes his foot to pad K, slight pressure upon which, with the assistance of hand-lever F, performs the operation.

I claim—

1. The curved tooth-fastener A or B, provided with a groove for the tooth and a slot for end adjustment, substantially as shown and described.

2. The compound hand and foot lever, composed of the arms F G L, foot-pads I K, and stop *i*, substantially as shown and described.

In testimony whereof I have hereunto set my hand this 22d day of March, 1876.

JAMES F. TRADER.

Witnesses:
JOHN A. HENRY.
T. L. MAGRUDER.

580 DEFENDANT'S EXHIBIT KELLY PATENT. Fred. W. Stevens, Notary Public & Acting Ex'r.

(Here follows diagram marked p. 581.)

582 UNITED STATES PATENT OFFICE.

JOHN KELLY, of Troy, Ohio.

Improvement in Corn-Planters.

Specification forming part of Letters Patent No. 167,612, dated September 14, 1875; application filed March 19, 1875.

To all whom it may concern:

Be it known that I, John Kelly, of Troy, in the county of Miami and State of Ohio, have invented certain improvements in corn-planters, of which the following is a specification:

My invention relates to corn-planters, and consists in so constructing the machine that the driver may, by moving a lever and without leaving his seat, raise or depress the runners, according as the ground is soft or hard, and fix them in that position.

Figure 1 is a longitudinal section of a corn-planter, with my improvements, and Fig. 2 is a top view of the same.

In the drawings, R represents the runners, which are pivoted in the ordinary manner at F to the beams P, which are attached to the axle of the driving-wheels. The tongue of the machine, which is not shown in the drawings, is attached to the runners in the ordinary manner. At *d* is pivoted to the beams P a beam, *c*. This beam is attached at its forward end to the runners by a link, *e*, as shown in Fig. 1. L is a lever, whose fulcrum is at its lower end,

which has a short, horizontal arm, *l*, to which is hinged a hook, B. This hook passes through a slot in the beam *c*, and has a weight, *a*, to keep it against the back end of the slot. The slot has two pins, *g* and *h*, one at each end, on which catch notches in the hook. At S is a toothed sector, into which works a catch actuated by the handle *r*, so that when the operator grasps the handle of the lever L in his hand the handle *r* is pressed close to it and raises the catch so that the lever may be moved backward and forward. This catch and sector serve to keep the lever in any desired position. I is the driver's seat, fixed to a support, K, which is pivoted at *l* to the frame P of the machine. O is a brace pivoted at *n*. At *m* is a bolt, passing through the support K, and through a slot in the brace O.

To balance the machine, the nut *m* is loosened, and the seat I moved backward or forward, which the slot in the brace O allows it to do, until the proper balance is obtained. The nut is then tightened and the seat will be held firmly in place.

If it be desired to box the machine for transportation or other purposes, the bolt *m* is withdrawn, and the seat and brace may then be folded down flat.

In passing over soft ground the wheels sink in to a certain extent, which lowers the runners, and it is often desirable to raise them somewhat. This is done by the driver's drawing the lever-handle L back. This pulls the hook B down, and with it the rear end of the beam *c*, and as that beam is pivoted at *d*, its forward end, and with it the runners R are raised.

In passing over hard ground it is desirable for analogous reasons to lower the runners. This is done by moving the lever L forward, when the runners will be lowered by their own weight.

In the case of very hard ground it is sometimes necessary to force the runners down. To do this the driver, with his foot, pushes the hook B forward, so as to detach the notch from the pin *h*. He then draws the lever back until the notch *b* catches on the pin *g*, and then pushes it forward, thus forcing the runners down into the ground.

It will be seen that the driver has thus a ready means of raising or lowering the runners, or of forcing them down instantaneously and without stopping the machine, and of holding them in any required position without the exercise of muscular power, which is a very valuable assistance, especially where the ground varies from hard to soft, and *vice versa*, in the same field.

The hook B has two notches to catch on the pin *h*. The lower one of these is to raise the runners off the ground in driving to and from the field, and the other for use in the field.

The seed-boxes and feeding mechanism are placed at T T, but are not shown, as they form no part of this invention.

What I claim as my invention is—

1. The combination, in a corn-planter, of hand-lever L, hook B, and beam *c*, for raising or lowering the runners, or forcibly depressing the same, at the will of the operator, substantially as described.

2. The combination, in a corn-planter, of hook B and counterbalance *a*, substantially as and for the purpose set forth.

H. J. HOWE.

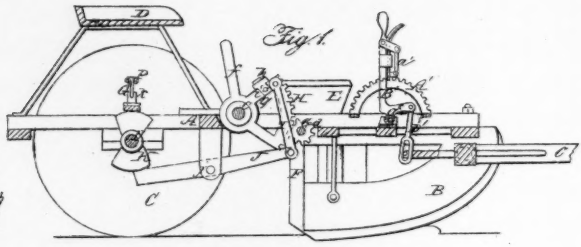
Corn-Planter.

583

No. { 1,290, / 32,294. }

Patented May 14, 1861.

Fig. 1.



No. 359.
The Farmers' Friend Mfg Co.
v.
The Challenge Corn Planter Co.
p. 553

Fig. 3.

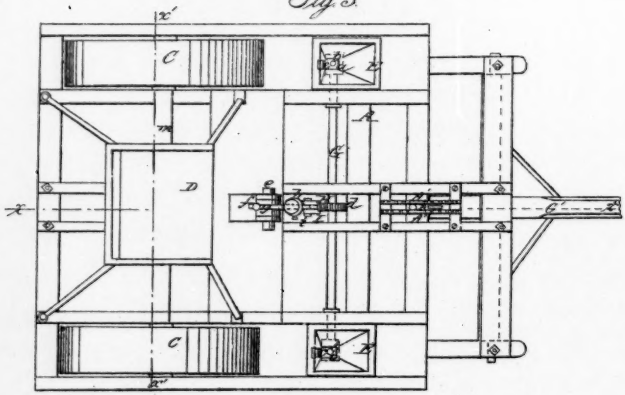
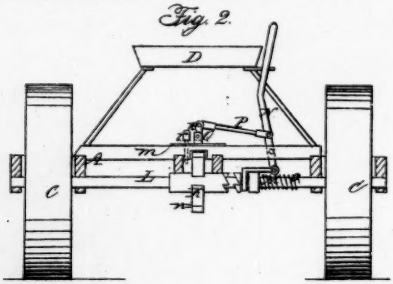


Fig. 2.



Witnesses:

R. H. Eddy
A. S. Spencer

Inventor:

H. J. Howe
per Munn & Co
Attorneys

582½ 3. The combination, in a corn-planter, of the hook B, hand-lever L, and toothed sector and catch, substantially as and for the purposes specified.

4. In a corn-planter, the combination of beam *c*, pivoted at *d* to the frame of the machine, hook B, acting in a slot in the beam *c*, as described, and lever L, to actuate the same, for the purposes set forth.

JOHN KELLY.

Attest:
W. F. ROSS.
R. GIBBS.

(Here follows diagram marked p. 583.)

584 UNITED STATES PATENT OFFICE.

H. J. HOWE, of Onarga, Illinois.

Improvement in Corn-Planters.

Specification forming part of Letters Patent No. 32294, dated May 14, 1861.

To all whom it may concern:

Be it known that I, H. J. Howe, of Onarga, in the county of Iroquois and State of Illinois, have invented a new and improved corn-planter; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the annexed drawings, making a part of this specification, in which—

Figure 1 is a side sectional view of my invention, taken in the line *x x*, Fig. 3; Fig. 2, a transverse vertical section of the same, taken in the line *x' x'*, Fig. 3; Fig. 3, a plan or top view of the same.

Similar letters of reference indicate corresponding parts in the several figures.

This invention relates, first, to a novel and improved means for operating the seed-distributing device, whereby the latter may be actuated by the driver when planting in check-rows is required, or actuated automatically from one of the ground-wheels when it is designed to plant in rows for cultivation in one direction only.

The invention relates, secondly, to an improved means for elevating the front part of the machine, so that the furrow-shares or runners may be free from the earth, and the machine readily turned, when required.

To enable those skilled in the art to fully understand and construct my invention, I will proceed to describe it.

A represents a rectangular frame, the front part of which is supported by two runners, B B, one being at each side of the frame. The back part of the frame is supported by two wheels, C C', which

are in line with the runners B B. D is the driver's seat, placed on the back part of the frame A.

At each side of the frame A, on its upper part, there is placed a seed-box, E, said seed-boxes being directly over the back part of the runners B B. From the bottom of each seed-box E a spout, F, extends down to the back end of the runner B below, as shown in Fig. 1.

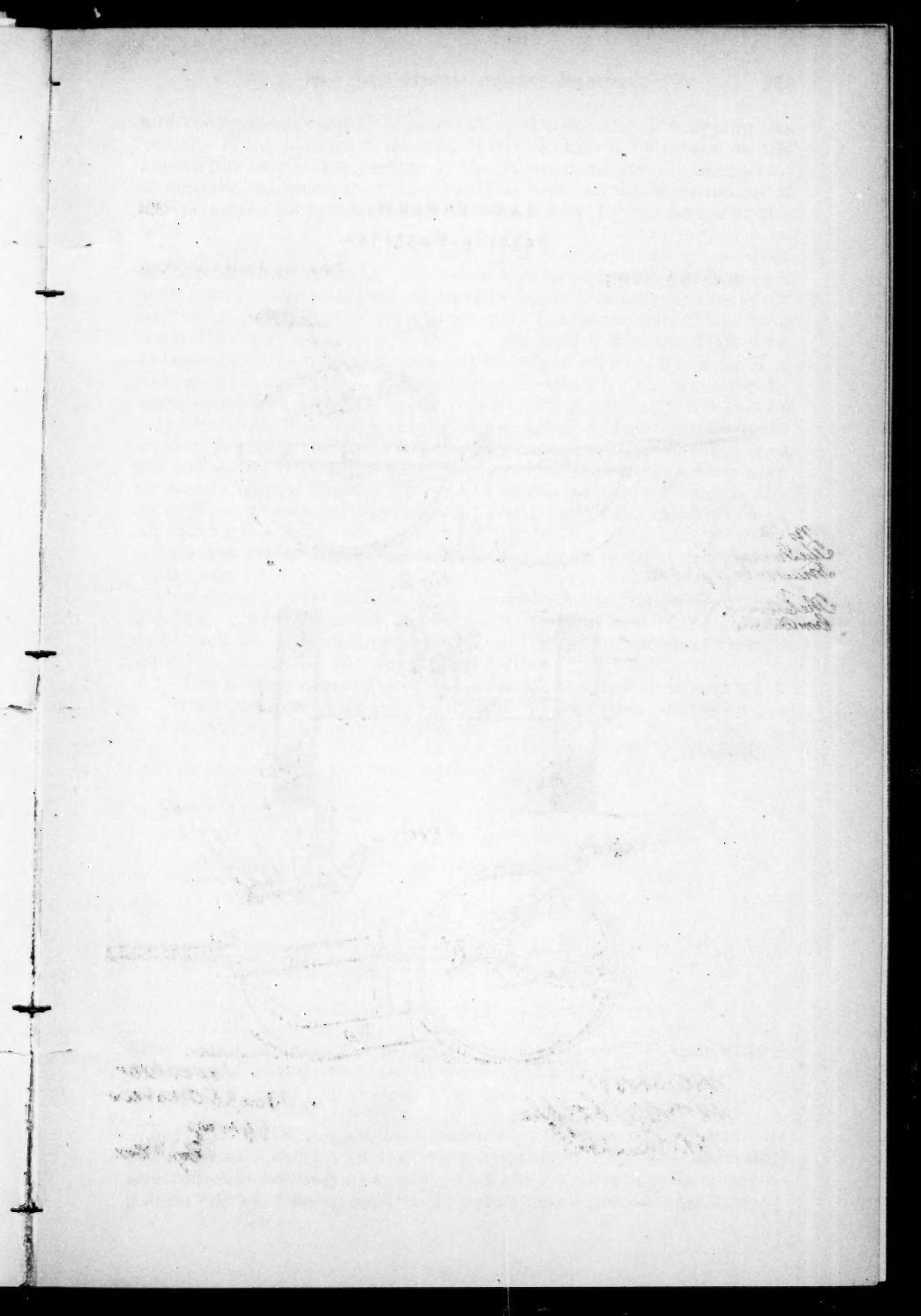
G is a shaft, which is placed transversely on the frame A, and has a cylinder, *a*, on each end, said cylinders being at the bottoms of the seed-boxes E E, and each provided with a seed-cell, *b*. On the periphery of each cylinder *a* a cut-off brush, *c*, bears.

On the shaft G, at its center, there is placed a pinion, *d*, which gears into a segment-rack, H, which has its center at *e*. To the back part of the segment H, just above its center, there is attached a lever, *f*, the use of which will be presently shown, and on the upper arm, *g*, of the segment there is placed a sliding weight, *h*, which may be secured at any desired point on the arm *g* by a set-screw, *i*. (See Fig. 1.) The segment-rack H is connected by a stirrup, I, to a lever, J, which has its fulcrum at *j*. The back end of this lever extends underneath a tapper, K, which is placed loosely on the axle L of the wheels C C', and is made to turn with the axle, when necessary, by means of a sliding clutch, M, which is placed on the axle and is moved by a lever, N, and made to engage with one end of the hub of the tappet. This will be fully understood by referring to Fig. 2. A spiral spring, O, on the axle L has a tendency to keep the clutch M engaged with the tappet K.

To the lever M of the clutch N there is connected, by a rod, P, a bent lever, Q, said lever having its fulcrum at *k*, and connected to a vertical rod, *l*, which extends down a cross-bar, *m*, on the frame A by the side of the tappet K. When the clutch M is engaged with the tappet K the rod *l* is elevated, its lower end being within the cross-bar *m;* but when the clutch is out of gear with the tappet the rod *l* is depressed and extends within the path of rotation of a pin, *n*, which projects from the side of the tappet and prevents the casual movement of the latter.

The operation of the above-described parts is as follows: As the machine is drawn along the runners B B form the furrows, and the clutch M, when engaged with the tappet K, causes the latter to rotate with the axle L. The tappet acts on the back end of the lever J, raising the front end of the latter, and consequently the segment-rack H, which rotates the pinion *d* and the shaft G, and causes the seed-cells *b* of the cylinders *a a* on shaft G to pass within the hopper and fill with the seed, and as the prominences of the tappet pass the end of lever J the weight *h* causes the segment-rack to descend and the seed-cells *b* to turn out from underneath the boxes E E, the seed being discharged from the cells into the spouts F, and conveyed by the latter into the furrows made by the runners B B.

The velocity of the backward movement of the shaft G may
585 be regulated by adjusting the weight *h* nearer to or farther from the front end of its arm *g*, and in case the corn is to be planted in check-rows the clutch M is disengaged from the tappet,

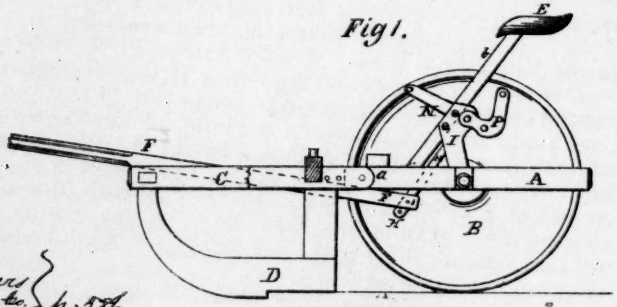


J. C. BARLOW. 586

Seeding-Machine.

No. 162,599 Patented April 27, 1875.

Fig 1.



No. 359.
The Farmers
Friend Mfg. Co.
v.
The Challenge
Com Planter Co.
p. 586.

Fig 2.

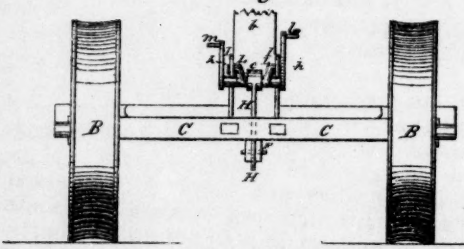


Fig 3.

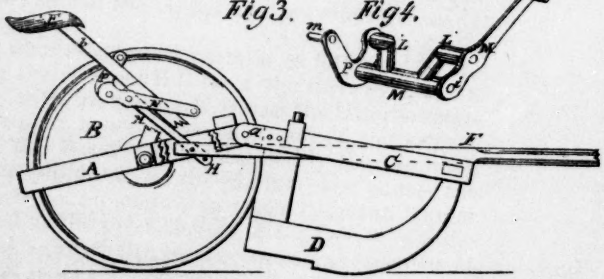


Fig 4.

Witnesses:
Wm. E. Chaffee
Thos. Jewett

Inventor:
Joseph C. Barlow
by his attys
Cox & Cox

and the segment-rack H is operated by the driver. By varying the velocity of the backward movement of the shaft G by means of the adjustable weight *h*, a greater or less momentum, jar, or concussion, as may be required, may be given the seed at the termination of the backward movement of the shaft to insure the discharge of the seed.

On the front part of the frame A, at its center, there are secured two semicircular racks, A′ A′, between which a bent lever, B′, which is attached to the back end of the draft-pole C′ works, the lever B′ having its fulcrum at a^x on the frame. The lower end of the bent lever B′ is connected by a link, D′, to the back end of the draft-pole, as shown clearly in Fig. 1, and to the upper end of the lever B′ a slide-stop or pawl, *a′*, is attached, by operating which the lever B′ may be secured at any desired point of its movement. It will be seen, therefore, that by drawing the upper end of the lever B′ backward sufficiently the front end of the frame A will be elevated and the runners B B raised above the ground, so that the machine may be readily turned when required. The stop or pawl *a′* retains the lever B′, and consequently holds the front part of the machine in an elevated state.

I do not claim the runners B B, for they have been previously used; but

I do claim as new and desire to secure by letters patent—

1. The arrangement of the tappet K on axle L, the lever J, segment-rack H, with sliding weight *h*, and pinion *d* on shaft G, substantially as and for the purpose set forth.

2. The arrangement of the bent lever B′, attached to the frame A and draft-pole C′, the semicircular racks A′, and pawl or stops *a′*, as and for the purpose herein set forth.

H. J. HOWE.

Witnesses:
LEWIS RUSS,
G. M. LOVELL.

(Here follows diagram marked p. 586.)

587 UNITED STATES PATENT OFFICE.

JOSEPH C. BARLOW, of Quincy, Illinois, assignor to The Vandiver Corn-Planter Company, of same place.

Improvement in Seeding-Machines.

Specification forming part of Letters Patent No. 162,599, dated April 27, 1875; application filed September 15, 1874.

To all whom it may concern:

Be it known that I, Joseph C. Barlow, of Quincy, Illinois, have invented certain new and useful improvements in devices for operating the frames of seeding-machines, of which the following is a specification, reference being had to the accompanying drawings.

The invention relates to an improvement in devices for elevating and depressing the frame of seeding machines, which has attached to it the furrowing mechanism, and is especially applicable to corn-planters.

It consists of two levers properly secured to a shaft working in bearings under the standard sustaining the driver's seat, and connected by a pitman-rod with the rear of the front frame or tongue, the latter being securely attached to the front frame, which has the furrowing mechanism—all so arranged that the driver may, by pressing one lever downward and forward, raise the front frame and furrowing devices clear of the ground, or lock the operating mechanism, thus holding the front frame in position, as desired; or, by pressing downward and rearward upon the opposite lever, he may force the rear end of the front frame downward, thus deepening the furrow. The mechanism carrying the invention is mounted upon wheels and connected by hinges, or pivoted to the device which has the furrowing machine, which usually supports the device or frame. When the pitman-rod is connected with some other part of the front frame than the rear end of the tongue, the latter is received in front of it. If connected with the tongue the latter is securely attached to the frame. In either case the front end of the tongue is supported by the harness between the horses.

The object of the invention is to provide a convenient means of enabling the driver of the planter to lessen or increase the depth of the furrow or to raise the frame having the furrowing devices clear of the ground.

Figure 1 is a side elevation of a device embodying the elements of the invention, one of the wheels being removed. Fig. 2 is a rear elevation of same, both wheels shown. Fig. 3 is a side elevation, illustrating operation. Fig. 4 is a detached view of the operative mechanism.

In the accompanying drawings A is a frame supported by the wheels B and connected with the frame C supported by the runners D, the frames A and C being hinged together in any suitable manner, as shown at *a*. The driver's seat E is placed above the frame A and sustained by the standard *b* inclining downward and forward, its lower end securely attached to the front central part of the frame and having the slot *d* in its lower edge to receive the tongue F, which passes under and is secured to the frame C, its front end being supported by the neck-yoke between the horses, which are hitched to the tongue in front of the frame C. The rear end of the tongue F is slotted to receive the front end of the pitman-rod H, which is pivoted there and which extends upward and backward, having the loop or sleeve *e*, which encompasses the shaft under the standard sustaining the driver's seat. Upon each side of the standard *b*, and securely attached thereto, are the plates I, the rear upper ends of which extend beyond the standard and are provided with apertures *h*, in which are journaled the ends of the elbows or cranks L, which extend inward toward each other; thence downward until they are united with or attached to the shaft M, the loop *e* being placed between them. The ends of the crank L extend beyond the plates I,

and are secured to the operating-levers N and P to prevent them turning. The ends of the shaft M extend on each side beyond the outer sides of the plates I, and are reduced to axles, one of which is secured in the aperture *i* at the end of the lever end, which extends upward and forward, having its front end provided with a suitable foot-rest, *l*, which is located in convenient reach of the driver's foot. The axle of the crank L passes through the lever N, forming its fulcrum. Upon the other side of the standard *b* is provided the bent lever P, the arm of which extends upward and rearward, its elbow receiving one of the axles of the shaft M, while the end of the lever receives one of the axles of the crank L as a fulcrum project-
588 ing through the plate I. The lever P is supplied with the foot-rest *m*, which stands below and under the front edge of the driver's seat and in convenient location to his foot.

The above are the several positions of the mechanisms mentioned when the frames A and C are on the same level.

When it is desired to raise the frame C or lessen the draft of the furrowing mechanism or depth of the furrow the driver places his right foot upon the rest *b*, and, by pressing thereon, his body sustained in the seat, he can exert his whole strength, and thus forces it downward and forward, which rotates and elevates the shaft M, the axle of the crank L acting as a fulcrum to the lever N, thus drawing the pitman-rod upward and backward, which imparts to the rear end of the tongue F or rear side of the frame C (if the pitman be attached to another part thereof than the tongue) an upward movement, and the front part of the frame C being supported by the tongue it may be raised so that the furrowing mechanism shall clear the ground or come in contact therewith to the desired diminished depth. If it be desired to sustain the frame so that the furrowing mechanism is clear of the ground, it is only necessary to force the lever N downward until it stands at the same inclination as the pitman-rod, when the devices will be locked, the shaft M, lever N, and pitman-rod H all being in the same plane. If it be desired to deepen the furrow, the driver places his foot upon the rest *m*, and pushes it downward. This forces the pitman-rod downward and forward, thus depressing the rear end of the frame C, forcing the heels of the runner or furrowing mechanism deeper into the ground.

It is obvious that the tongue F may be rigidly secured to some other part of the frame C, and the pitman-rod connected with the frame by a suitable device near its rear, and directly behind the rear end of the tongue, which should be secured on the central line of the frame. It is also obvious that the cranks L may be dispensed with, and the lower end of the lever P and the central lower part of the lever N pivoted to plates I. Preferably, however, the cranks L are used, since they act upon the shaft M in immediate relation to the sleeve or loop *e*.

What I claim as my invention, and desire to secure by letters patent, is—

1. In a seed-planter, having two frames pivoted together, one supported by wheels, and the other having the furrowing mechanism,

the crank-shaft M, having the levers N and P, substantially as and for the purpose set forth.

2. In a seed-planter, having the pivoted frames, the combination of the pitman H, crank-shaft M, and levers N and P, as and for the purpose expressed.

3. In a seed-planter, having the pivoted frames, the crank-shaft M L, lever N, bent lever P, and foot rests *m* and *l*, constructed and arranged substantially as specified.

In testimony that I claim the foregoing improvements in devices for operating the frames of seeding-machines, as above described, I have hereunto set my hand and seal this 19th day of August, 1874.

JOSEPH C. BARLOW. [L. S.]

Witnesses:

C. P. WEBSTER,

WM. H. MINNIX.

589 UNITED STATES PATENT OFFICE.

WILLIAM A. MYERS, of York, Pennsylvania.

Improvement in Horse Hay-Rakes.

Specification forming part of Letters Patent No. 113,552, dated April 11, 1871.

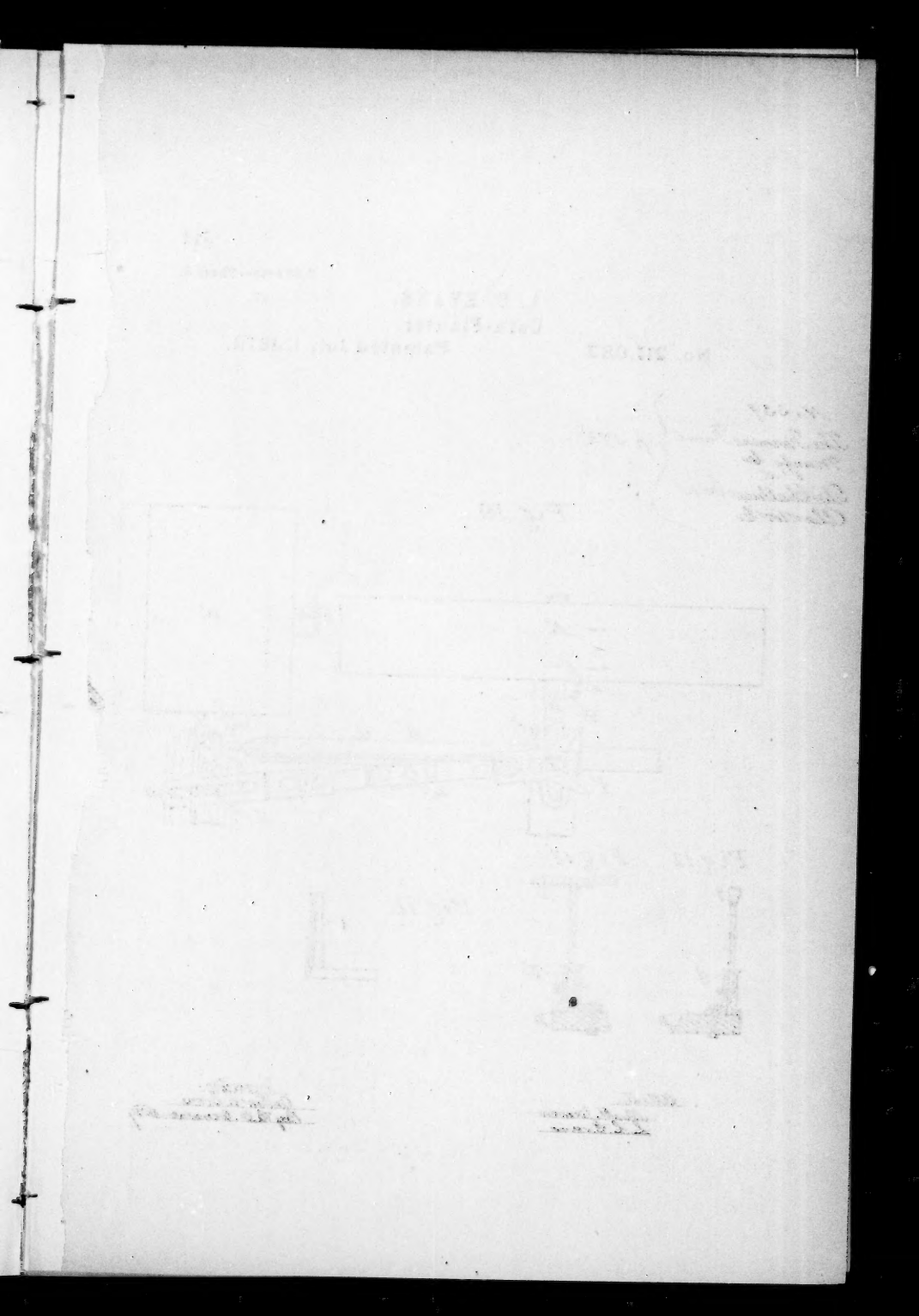
To all whom it may concern:

Be it known that I, William A. Myers, of the borough and county of York, in the State of Pennsylvania, have invented certain new and useful improvements in horse-rakes, of which the following is a specification:

The first part of my invention relates to the teeth; and the improvement consists in mounting independent spring-teeth in pairs in a bracket on the axle, which bracket has sockets to receive the teeth, and guides to control their movements, as hereinafter explained. My improvement further consists in combining rake-teeth, oscillating on the cranked axle of the supporting-wheels, a draft-frame hinged beneath said axle, and carrying clearing-teeth, and a seat for the driver, and a pressure-lever or treadle pivoted on the axle to hold down the teeth at pleasure.

In the accompanying drawings of my improved horse-rake, figure 1 is a plan; Fig. 2, a vertical longitudinal section through the line *x x* of Fig. 1.

An axle-tree, A (by preference of wood), has a bracket, A^1, secured to its under side at each end. A spindle or arbor, A^2, of simple round iron, fits into a concave groove on the under side of the bracket. The wheels B B′ turn loosely on these spindles. Socket-plates C, having sockets *c* and guides *c′* formed in them, are secured upon the upper side of the axle-tree. The teeth D of the rake are bent horizontally inward at their upper ends, as at *d*, Fig. 1, and inserted into the socket-plates, as shown. These plates may be of



3 Sheets—Sheet 2.

A. C. EVANS.
Corn-Planter.

No. 217,083. Patented July 1, 1879.

No. 359.
The Farmers Friend Mfg. Co.
v.
The Challenge Cor. Planter Co.
p. 592

Fig. 3.

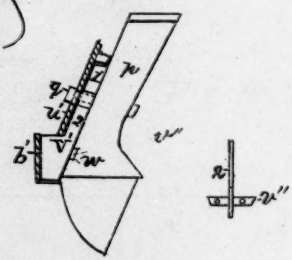


Fig. 4.

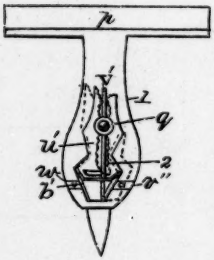


Fig. 5.

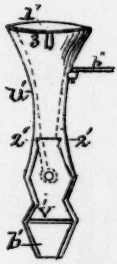


Fig. 6.

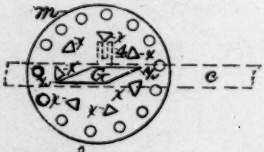


Fig. 9.

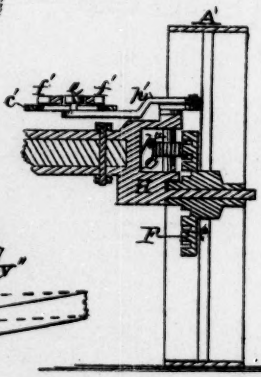


Fig. 8.

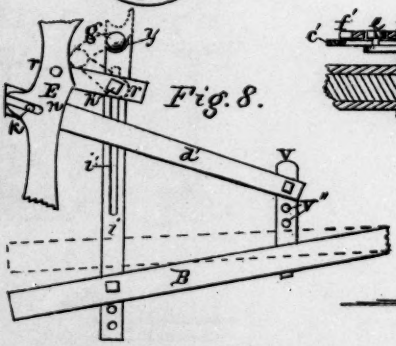
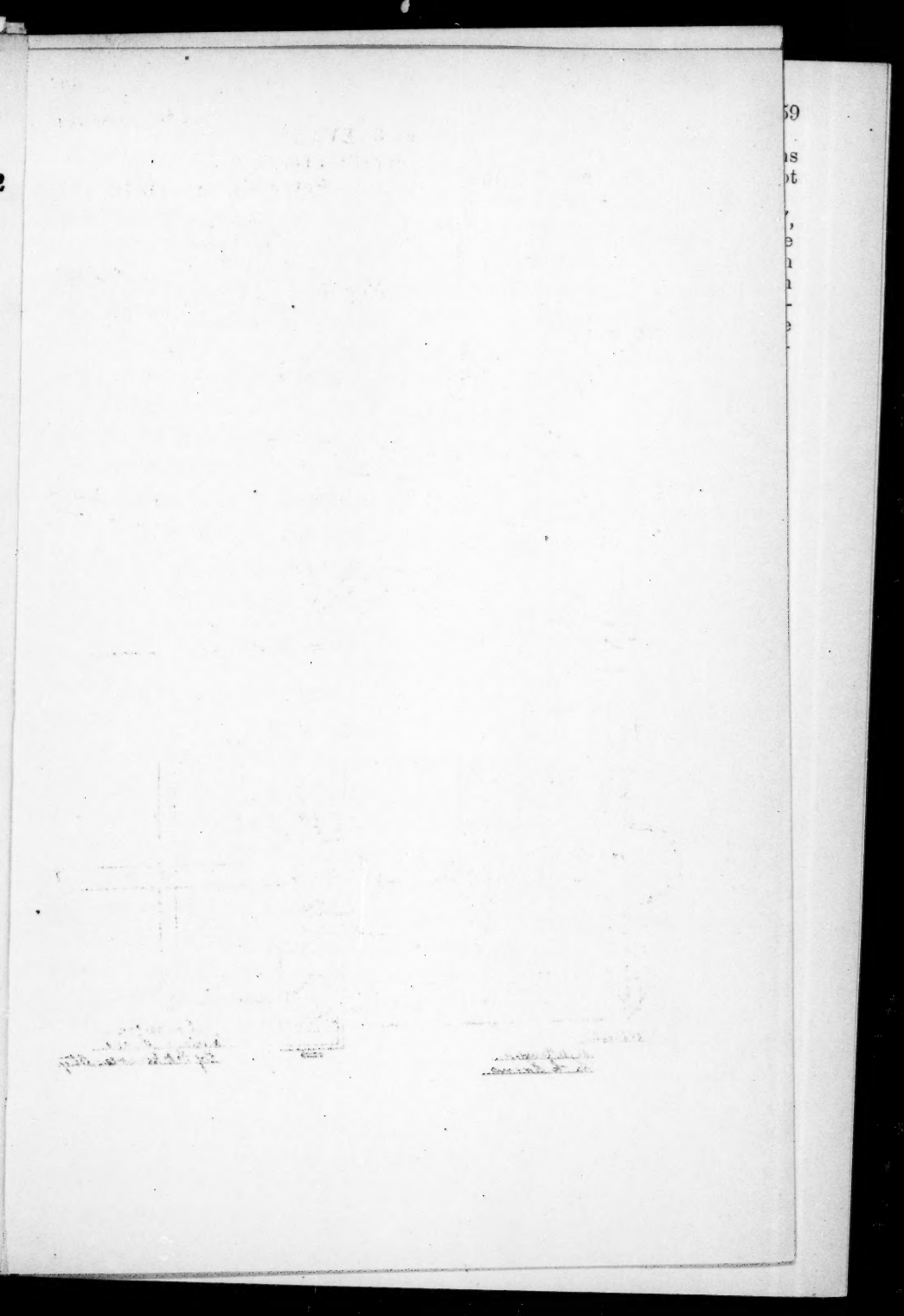


Fig. 7.

Attest.
M. M. Converse.
L. C. Evans

Inventor.
Austin C. Evans.
By B. C. Converse, Atty.



3 Sheets—Sheet 1.

A. C. EVANS.

Corn-Planter.

No. 217,083. Patented July 1, 1879.

No. 359.
The Farmers
Trump Mfg Co.
p. 591
The Challenge
Corn Planter Co.

Fig. 1.

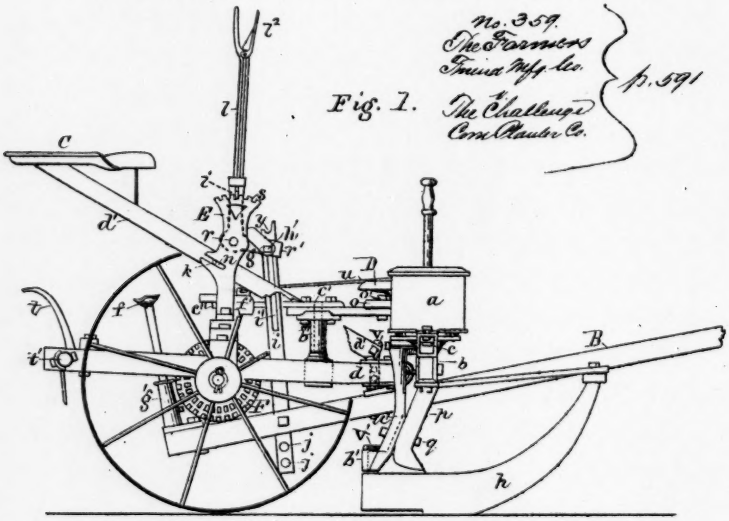
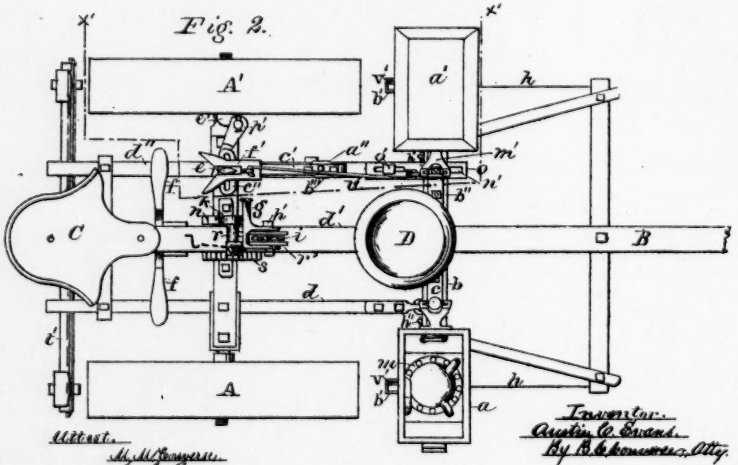


Fig. 2.



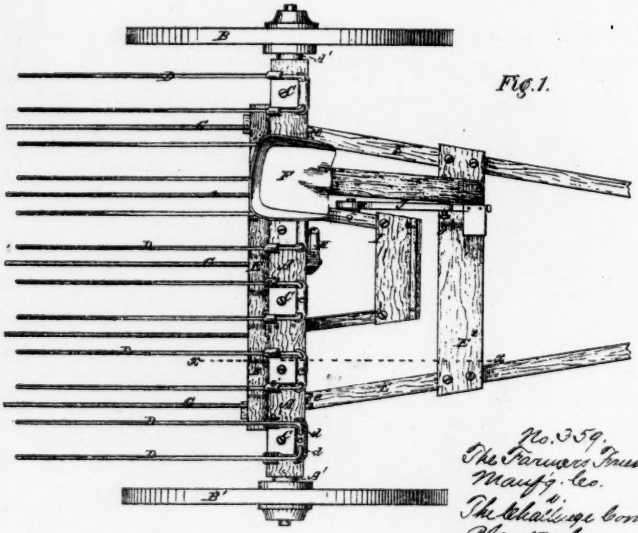
Witnesses.
M. M. Bowman.
L. L. Evans.

Inventor.
Austin C. Evans.
By B. & Bowman, Atty.

W. A. Myers,
Horse Rake.

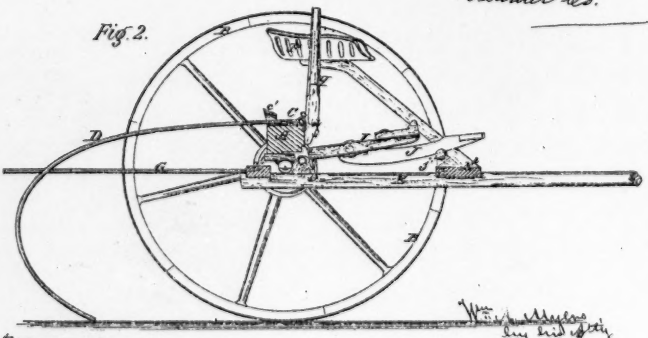
No. 113.552. Patented. Apl. 11. 1871.

Fig. 1.



No. 359.
The Farmers Friend Manf'g. Co.
v.
The Challenge Corn Planter Co.
p. 590

Fig. 2.



Wm. A. Myers
by his Atty
Wm. D. Baldwin

Witnesses.
Joel Peyton
Baltis De Long.

cast, malleable, or wrought metal, and are cheaply made. As the sockets and guides are open below, the teeth can readily be placed in them. The plates are then secured to the axle by screws. The parts are thus easily and quickly secured in place, are firmly held in their proper relation, and can be easily removed or replaced when desired. The guides *c'* restrain the lateral deflection of the teeth, but allow each one a limited amount of vertical play independently of its fellows. The draft-frame is composed of two shafts, E, united, in rear of the axle, by a cross-brace, E^1, and in front by a similar brace, E^2. This frame is pivoted to the axle by lugs *e* on the under front corner of the main axle, and eccentrically to the axis of the wheels. Clearing-teeth G project backward from the draft-frame. A seat, F, for the driver is mounted on the draft-frame. The axle may be rocked by a hand-lever, H, thereon, or by a foot-lever, I, both of these levers being in easy reach of the driver. A link or pressure lever, J, pivoted at its rear end to the lever I, extends forward, and rests on an arm, *j*, projecting from the standard which supports the driver's seat, or on the draft-frame. This lever serves to regulate the pressure of the teeth upon the ground, and is operated by the foot of the driver.

As the driver is mounted on the draft-frame, and as this frame is hinged in front of the axis of the wheels, the weight of the driver aids in tilting the axle, and causes the teeth easily and quickly to rise.

I claim as my invention—

1. The socket-plates constructed as described, with open sockets *c* and open guides *c'* to receive the rake-teeth, so that each pair of teeth may be clamped to the axle by a single screw, and the teeth can be separated by removing the socket-plate from the axle.

2. The combination of the cranked axle, the rake-teeth, mounted on top of said axle, the draft-frame, hinged to the under front corner of the axle, the clearing-teeth and driver's seat, mounted on the draft-frame, and the pressure-lever, pivoted to the foot-lever, and resting on the draft-frame, all these parts being constructed and operating as described.

3. The pressure-lever pivoted to the foot-lever, and resting on the draft-frame, as described.

In testimony whereof I have hereunto subscribed my name.

WILLIAM A. MYERS.

Witnesses:
JOHN H. SPHOR.
JNO. A. METZELL.

(Here follow diagrams marked pp. 590, 591, 592, 593.)

594 UNITED STATES PATENT OFFICE.

AUSTIN C. EVANS, of Springfield, Ohio.

Improvement in Corn-Planters.

Specification forming part of Letters Patent No. 217,083, dated July 1, 1879; application filed October 24, 1878.

To all whom it may concern:

Be it known that I, Austin C. Evans, of the city of Springfield, in the county of Clarke and State of Ohio, have invented certain new and useful improvements in corn-planters, of which the following is a specification.

My invention relates to the dropping devices and a peculiar and novel arrangement by which they are connected with and disconnected from the driving-gear, which is used when dropping or drilling automatically, comprising also the construction and arrangement of certain detachable parts in changing from a dropping-planter or hilling-machine to a drill; also, to auxiliary devices for forcing the shoes or cutters into the ground and retaining the depth during the operation of planting.

Figure 1 is a side elevation (from the right) of my machine. Fig. 2 is a plan view of the same. Figs. 3, 4, 5, 6, and 7 are details (enlarged) of the dropping devices. Fig. 8 is an enlarged view of the connecting parts for retaining the shoes in the ground and for throwing the automatic devices out of gear. Fig. 9 is a vertical cross-section of the wheel A′, its gearing and bracket supporting it, and the devices for connecting it with the drilling attachments. Fig. 10 is a top view of the left section of the machine shown in Fig. 2 through line *x′*. Fig. 11 is a view of the detachable L-shaped post I, which is bolted to the slide-lever *c* for connecting it with the automatic devices. Fig. 12 is a vertical central section, taken through the adjustable foot-rest, which is arranged below the driver's seat, and Fig. 13 is a like view of the adjustable dropper's seat, a portion only of the bar upon which the hollow standards of these devices are mounted being represented.

My planter is designed for operation by hand with an attendant on the front seat, D, and also for dropping and drilling automatically without such attendant.

The machine shown is of the usual form, with the front and rear (connected) sections, the latter being flexibly attached to the former by a common clevis-joint at the ends of the frame-bars *d d″*. These extend under the axle and support a scraper-bar, *t′*, pivoted in their rear ends.

The tongue B is much longer than is usual, is attached under the main cross-bar *b*, and extends back to the rear of the axle. On its extreme rear end is bolted a hollow post, *g′*, which supports an adjustable upright fork, the two prongs of which are turned flat toward each side to form the horizontal foot-pieces *f*, by which the

shoes or runners *h* are forced into the ground. A set-screw retains the shank of the fork at any required height in the post *g'* to adapt the foot-levers to the convenience of the operator.

The seat C is supported upon the rear end of an inclined bar, *d'*, above the rear of the machine. This bar is centrally pivoted above the axle between the two uprights of the rack-standard E, which latter is secured on the top of the axle. The ends of a fixed pin driven through the seat-bar rest in inclined slots *n* of the rack-standard. The front end of the seat-bar is also pivoted and made adjustable upon post V located on the tongue near the front seat-post, behind the cross-bar *b*. The post V has a series of holes in it to allow of elevating or depressing the driver's seat to any fixed position from this point. A rock-shaft, *r*, connects the two uprights of the rack-standard E, being pivoted just over the tongue. A hand-lever, *l*, extends upward from this rock-shaft, and is provided with a catch, l^1, adapted to engage with the notches in the segmental rack on the top of E. The catch is operated by a rod, which connects the same with a spring-lever handle, l^2, pivoted near the upper end of the lever *l*. The rock-shaft *r* has a divided arm, *r'*, extending forward, through which a flat slotted bar, *i*, extends vertically, passing also through a mortise in the tongue and seat-bar, as seen in Figs. 1 and 8. The lower end of bar *i* is pivoted in the tongue, and has a series of holes, *j j*, in it to make it adjustable. A long slot, *i'*, extending in it from a point below the seat-bar to near the top end, allows it to rise through the arm *r'* when the rear of the tongue is elevated, which movement is made by the operator removing his feet from the foot-pieces *f* and throwing his whole weight upon the seat C, the bar *d* acting as a lever, with its fulcrum *k* in the standard E. This movement tilts the front section forward, throwing
595 the drilling devices on the left end of the axle out of gear with the dropping-slide, the operation of which will be hereinafter more fully explained.

A U-shaped locking-bar, *g* (see Figs. 1, 2, and 8), is pivoted by bolt *h'* to the arm *r'* of the rock-shaft, having a lateral extension to operate by the foot. This is thrown forward into the notch *y* on the top end of bar *i*, locking the two sections of the planter rigidly together, when it is desired to raise the runners out of the ground by the movement of the operator, before described. When the sections are thus locked, by throwing the hand-lever *l* forward the runners can be forced into the ground when the weight of the operator on the foot-levers *f* alone would not penetrate it. The depth of the runners can at the same time be regulated and retained by the hand-lever *l*, it being the long arm of an angular lever of which the arm *r'* is the short one, with the rock-shaft *r* at the angle as its fulcrum.

The seed-boxes *a* and *a'* have rotary seed-plates *m*, provided with the usual number of seed-cells. On the under side of these seed-plates (see Fig. 6) the series of lugs *x x* projecting at right angles from their under surface (for actuating them) are nearly in the form of an equilateral triangle in their cross-section, this form being necessary to facilitate their operation by the rhombus-shaped block G on the horizontal slide-lever *c*, which actuates the seed-plates. It

will be noticed that this block actuates the disk m when lever c is reciprocated by its angular points Z Z catching over one of the lugs x on either side of their circle at each movement. The block G operates the disk entirely from within the circle of the lugs x x instead of from the outside of the circle, as is the case with all forms of the ordinary slide-lever for actuating rotary seed-plates.

In the view shown in Fig. 6 slide-lever c is shown in dotted lines, in order that the block G may be distinctly seen and its operation understood. Opposite to the block G on the slide-lever is a fork, 4, projecting at right angles from the rear edge, which straddles lug 3 (see dotted lines, Fig. 6, and cross-section of slide-lever, Fig. 7) at the top of the seed-tube u' on the front side. (See Figs. 5, 6, and 7.) The fork 4 is detachable, being screwed on the slide-lever c, and used for oscillating the seed-tube u' in dropping in groups or hills, and is taken off when the machine is used in drilling.

The valve V is a stationary one, the opening at the lower end for the discharge of the seed in dropping for hills being made by the oscillation of the pivoted seed-tube u' over it. This valve is in two parts (see Figs. 3 and 4), 1 and 2. The upper section, 1, is cast solid in the form of a thin rib on the rear (central line) of the runner-post p, extending from about the middle to the point, where it is formed into a boss for the reception of the pivot-bolt q, which pivots the seed-tube u' to the post from that point downward, inclusive of the wide part which extends across the seed-pockets b' of the tube. It is in a separate detachable piece, and is removed when using the machine as a drill. It is secured to the post by screws through the transverse rib v'', which latter is let into the groove w, extending across the rear of the post for the purpose of firmly securing this portion of the valve from displacement. The seed-tube u' is an open funnel-shaped tube entire from the mouth $1'$ to the point $2'$. (See Fig. 5.) From this point to the lower end it is open on the side in contact with the post, which is flat and smooth to allow it to operate easily. Its upper part is vertical, so that it forms an angle at the upper point of contact. Its lower end extends to the rear, and is formed into a square tapering pocket (open above and below) for the retention of the seed, and to bring it to view before it is deposited in the furrow. It is oscillated laterally on its pivot q over the fixed valve V' by the motion of the slide c and its connection therewith through the bifurcated piece 4 and lug 3. (See Figs. 3, 4.) At the upper part of the opening in the tube is seen a notch or offset, $2'$, which covers the top end of v' as u' is oscillated, so as to prevent the seed from being obstructed in passing over the valve. The form of the pocket b' and the movement of the lower end of the tube away from the valve causes the seed to be discharged exactly in the center of the furrow.

To prepare my machine for drilling the detachable parts before described are taken off, and the seed-tubes u' are inclined inward at the top and secured by the hooks h'' on the rear of the cross-bar b, so as to be stationary.

The dropper-slide c is connected to the driving-gear on the left end of the axle through a lever, c', pivoted on the top of the post b''', which stands on the left side bar, d'' (see Figs. 1, 2, 9, 10), about mid-

way between the axle and the cross-bar *b*. This lever oscillates in a horizontal plane, actuating the seeding devices through a detachable L-shaped post, I, which is bolted on the top of the slide-lever *c* by bolt *d''* (see Fig. 2) on the left of the dropper's seat, and extends up through slot *n'* in the adjustable plate O on the forward end of the lever. Its rear end is provided with a sleeve, terminating in an angular fork, from which a slot extends forward about half its length. This fork receives a stud having an oval-shaped head, *e*, on the end of pitman *p'*, the latter connecting it with a crank on the top of a vertical pinion-shaft, *p''*, in the open bracket H.

The pinion *e'* is geared into the concentric gear-wheel F on the wheel A'. When the movement is made, as before described, to disconnect the driving-gear from the drilling devices for the purpose of turning at the ends of rows, &c., and the front section tilted forward, as seen in Fig. 10, the clutch or fork *f'* is drawn forward by a hooked rod, *u*, which connects it with hand-lever bracket *m'* on the left-seed box, thus releasing it from the stud *e*, the neck of which plays back and forth in the elongated transverse slot
596 in the plate *c''* on the rear end of *c'* under *f'*, the object being to allow of easy disconnection at this point by simply removing the feet of the operator from the foot-pieces *f f*, and permitting the gearing F *e'* and pitman *p'* to continue in motion, also to allow of easy connection being made at the option of the operator by replacing his feet on the foot-pieces and lowering the runners into the ground without the use or interposition of a hand-lever.

The shape of the head of stud *e* allows it to readily enter the slot in fork *f'* although the pitman *p'* is in motion, the faces of the fork standing at an angle of about forty-five degrees, so as to readily guide the stud *e* into its slot.

Heretofore drilling and dropping planters using concentric driving-gear have been thrown out of gear by disconnecting the pinion from the drive-wheel. This mode causes shocks and often breaking of the cogs. Besides this it is not always certain in operation, while my devices allow the connection and disconnection to be made with ease and certainty, and without shock or breakage.

The sectional view, Fig. 12, clearly shows the hollow post secured to bar B by a screw or bolt passing through a flange or plate formed at the base of the same. It is obvious, however, that the standard may be secured in other ways with like result. In Fig. 13 the dropper-seat D is illustrated as mounted in the same way as the foot-rests *f*, a hollow post, D', being secured upon bar B in like manner with post *g'*. The standard of the seat D is swiveled in post D', and rendered adjustable by a set-screw, substantially as shown.

I wish to be distinctly understood as making no claim to the adjustable dropper-seat, nor the adjustable foot-rests beneath the driver's seat, considered as separate devices.

I claim as my improvement—

1. In a corn-planter, the stationary valve V', constructed in two sections, 1 and 2, the lower section, 2, of which is detachable, so that

by its removal the devices connected therewith may be used for drilling, as hereinbefore set forth.

2. The pivoted seed-tube u', in combination with the stationary valve V', lower detachable section, 2, and the runner-post p, all constructed and arranged substantially as specified, and adapted to be operated for both dropping and drilling the seed.

3. In a corn-planter, a runner-post, p, constructed with a fixed or stationary valve, V', on the rear side of the same, for the purpose of adapting it to the operation of a seed-tube, u', pivoted thereto, and actuated in connection with the seed-plates by either a hand-lever or other driving mechanism, for the purpose hereinbefore set forth.

4. Hooks h'', arranged upon the cross-bar b, in combination with the pivoted seed-tube u' and the cross-bar b, whereby the seed-tube may be swung round upon its pivot, and then maintained in position by the engagement of the hook therewith, as and for the purpose set forth.

5. A rotary seed plate or disk, m, having a series of lugs, x x, projecting from its under surface, and of nearly equilateral triangular form in their cross-section, said lugs being arranged in a circle, and the disk thereby being adapted to be operated by a rhombus-shaped block, G, on the slide-lever c from within said circle, substantially as specified, and for the purpose set forth.

6. In a planter having a rotary seed dropping and drilling device, slide-lever c, rhomboid block G, seed-plate m, fork 4, in combination with seed-tube u' valve V', and runner-post p, as and for the purpose set forth.

7. In a pivoted or movable seed-tube, u', adapted to be operated in connection with a fixed or stationary valve, V', on the runner-post of a seed-planter, a rearward-projecting and downwardly-tapering seed-pocket, b', open above and below, as and for the purpose specified.

8. In combination with the stationary valve V' secured upon the runner-post, the pivoted seed-tube u', arranged to oscillate laterally over the said valve, substantially as herein shown and described, and for the purposes set forth.

9. In a corn-planter having its front and rear sections flexibly connected together, and constructed substantially as described, the adjustable, slotted, vertical bar i, connecting the tongue with the arm r' of rock-shaft r and its hand-lever l, and adapted to be operated in connection with the locking-bar g when thrown into its notch y for locking the two sections of the planter rigidly together, as and for the purpose hereinbefore set forth.

10. In a corn-planter having its front and rear sections flexibly connected together, and constructed substantially as described, an elevated rack-standard, E, on its axle, having an open guideway between its uprights, and supporting a seat-bar, d', and a rock-shaft, r (with its hand-lever l and auxiliary locking devices), pivoted therein, substantially as hereinbefore specified, for the purpose set forth.

11. In combination with the rack-standard E, hand-lever l, rock-shaft r, having arm r', locking-bar g, pivot-bolt h', bar i, having slot

i', notch *y*, and holes *j*, and tongue B, as and for the purpose hereinbefore specified.

12. In combination with the pivoted hand-lever *l*, arranged to force the runners into the ground through the medium of a vertical rod or bar, *i*, and a rock-shaft, *r*, the post *g'*, having flaring foot-pieces *f*, and mounted upon the tongue B in rear of the axle and below the driver's seat, the same constituting a means auxiliary to the said lever for the purpose of forcing down the runners, substantially as shown and specified.

13. In a corn-planter having its front and rear sections flexibly connected together, and constructed substantially as described, 596½ concentric gear-wheel F, pinion *e'*, pitman *p''*, plate *c''*, fork *f'*, stud *e*, pivoted bar *c'*, slotted plate *o*, and post I, for connecting with slide-lever *c* when dropping or drilling automatically, as hereinbefore set forth.

14. In a corn-planter having its front and rear sections flexibly connected together, and constructed substantially as described, the driving-gear adapted to be disconnected from the actuating-lever *c'*, that connects the same with its dropping and drilling devices, by removing the weight of the operator from the rear of the tongue to the driver's seat C, whereby the front section is tilted and the clutch *f* drawn forward on the lever *c'* by the rod *u* connecting it with the bracket *m'* on the seed-box *a'*, and disengaged from the stud *e* on the pitman *p'*, as hereinbefore set forth.

15. The slotted plate *c''*, in combination with the stud *e* on the pitman *p'*, for allowing the play of the stud in its slot when the clutch *f'* is drawn forward without communicating motion to the vibratory lever *c'*, or entirely disconnecting it from the same at the time the parts are thrown out of gear, substantially as hereinbefore specified.

16. The L-shaped post I, detachably bolted to the cross-bar *b*, in combination with the slotted plate *o* and the slide-lever *c* for connecting the forward end of the vibratory lever *c'* with the latter when using the machine as an automatic drill or planter.

AUSTIN C. EVANS.

Attest:

B. C. CONVERSE.

M. M. CONVERSE.

597 DEF'T'S EXHIBIT FILE OF COMPL'T'S ORIGINAL PATENT. Fred. W. Stevens, Notary Public & Acting Ex'r.

FARMERS' FRIEND M'F'G CO.
vs.
CHALLENGE CORN-PLANTER CO. } Equity.

(2–175.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of the letters patent granted Michael Runstetler, assignor to the Farmers' Friend Manufacturing Company, August 10, 1880, number 231,104, for improvement in corn-planter.

In testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 11th day of March, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

[Seal Patent Office, United States of America.]

BENJ. BUTTERWORTH,
Commissioner.

598 *Petition.*

$15, mail, d'r'g.

To the Commissioner of Patents:

Your petitioner, Michael Runstetler, a citizen of the United States, residing at Dayton, in the county of Montgomery and State of Ohio, prays that letters patent may be granted to him for the improvements in corn-planters, set forth in the annexed specification, vesting in him and his legal representatives the exclusive right of the same upon the terms and conditions expressed in the act of Congress in that case made and provided.

And he hereby appoints Messrs. Wood & Boyd, a firm composed of Edmund E. Wood and Edward Boyd, of the city of Cincinnati, State of Ohio, his attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

MICHAEL RUNSTETLER.

The honorable Commissioner of Patents will please recognize James L. Norris, Esq., of Washington, D. C., as our associate in the matter of the foregoing application.

WOOD & BOYD.

599 *Specification.*

To all whom it may concern:

Be it known that I, Michael Runstetler, a citizen of the United States, residing at Dayton, in the county of Montgomery and State of Ohio, have invented certain new and useful improvements in corn-planters, of which the following is a specification:

600 Nature and objects of the invention.

My invention relates to an improvement in corn-planters of the class employing a main frame mounted on wheels, which main frame is combined with a runner frame in front and so attached to the main frame that it may be either a rigid or yielding planter, and also employing cone gears and driving chains to actuate the dropping mechanism for planting and adapted to be used either as a rigid or yielding planter.

My improvement consists—

First. In the arrangement of a lifting hand lever mounted upon a shaft and connected to the foot lever, centrally pivoted to the main frame, the forward end of which lever is hinged to the runner frame and the several parts being so arranged that the runner frame may be controlled by either the hand lever or foot lever or both at the will of the operator, the hand lever being combined with detachable fastening devices so as to be set in proper position to form a rigid planter and so that the fastening devices can be dispensed with and the hand and foot levers used to control the operation of the
601 machine when used as a yielding planter.

[The second part of my invention consists in the arrangement of two sets of sprocket wheels driving a crank shaft and pitman for operating the seed devices and combined with a sprocket-wheel tightener attached to the main frame above and resting upon the sprocket chain so as to automatically keep the chain taut and adapt the runner frame to undulate in the operation of planting.

Cancel & insert per "A," June 15, '80.

Another feature of my invention consists in the arrangement of a clutch device for throwing in and out of gear the driving mechanism.

Another feature of my invention consists in combining for drilling corn the main frame of a corn-planter having the foot and hand levers adapted to act as a rigid or yielding planter, the runner frame suspended upon the main frame, with sprocket wheels, drive chains, and automatic chain tightener, crank, and pitman and adapted to operate the seeding mechanism in drilling.

Other features of my invention will be more fully explained by reference to the drawings and description thereof.]*

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* Words and sentences enclosed in brackets erased in original.

602 Description of accompanying drawings.

Fig. 1 is a side elevation partly in section of a corn-planter embodying the first features of my invention.

Fig. 2 is a front elevation partly in section of the same.

Fig. 3 is a broken plan view partly in section showing the connection between the hand and foot levers.

Fig. 4 is an elevation showing one of the runners with my improved dropping devices.

Fig. 5 is a vertical front elevation of the dropper mechanism.

Fig. 6 is a side elevation of the same.

Fig. 7 is a plan of the improved driving mechanism.

Fig. 8 is a side elevation partly in section of the same, line x x, Fig. 7.

Fig. 9 is a cross-section of the cone sprocket wheels and clutch device.

Fig. 10 is a horizontal elevation of part of the clutch device and drive gear.

Figs. 11 & 12 are elevations of the clutch with immediate connections broken and in section.

Figs. 13 — 14 are elevations of one of the clutch sprocket wheels.

603 Fig. 15 is an elevation showing the back of one of the sprocket wheels.

Fig. 16 is a vertical elevation of the pitman connection bracket on the dropper rod.

Fig. 17 is a plan view partly in section of the same.

Fig. 18 is a perspective view of the clutch lever.

General description.

A A′ represent the main frame; B, the axle; B′, grooved wheels; C′, the seat standard; F, the foot lever; N H L G, the runner frame. These several parts are fully described in prior patents.

d represents a shaft journaled at one end to the main frame and at the other to the seat standard.

c' represents the journal bracket at the seat standard, the foot lever F being rigidly connected to and journaled on the shaft d.

D represents a hand lever rigidly attached to shaft d.

E represents a segmental notch plate rigidly fastened to the main frame A.

d' represents a lock for lever D, passing through the shoulder of lever D and engaging at one end with the segmental notch
604 plate E and hinged at the other end to a bell crank lever, d^2, the movement of which locks and unlocks the lifting lever D. When it is desired to operate the machine as a yielding planter the locking device d' is thrown out of connection with the segment plate and secured by a hasp, d^3, the hand and foot levers then being free to vibrate with the runner frame and under control of the operator. When the locking devices of the lifting lever D are brought

into operation the operator sets the runner frame in any given position by means of lever D, the lock lever holding it rigid, but under easy control of the hand, or the foot lever may be used to assist in raising or lowering the frame, and the weight of the device may be thrown upon the foot lever to force the runners into the ground, if necessary.

P represents the dropper valve placed in the grain spout.

p, a pivot bolt, on which the valve P oscillates.

P′ is a partition in the grain spout, and held in a fixed
605 position in the bottom portion thereof by means of the lugs R R, but readily detachable therefrom by removal of the bolt *p*, upon which it is suspended.

In the operation of valves of this kind great difficulty has been experienced in uniformly dropping the seed when used as a drill; if the valve is removed entirely the seed drops out too far in the rear to be well covered, and if the partition alone is removed the operation of the valve interferes with the regular dropping of the seed.

To obviate these difficulties I have made the lower portion of the valve, which covers the grain channel, removable, so as to deposit the seed between the heels of the runners beneath the surface of the ground, the grain channel being always open for the continuous dropping of the seed.

Fig. 6 shows the preferred form of joint for making the valve detachable.

K represents the driving gear attached to one of the main wheels, the preferred form being shown in figure 8.

606 K′ represents a pinion mounted or cast on sleeve S′, through which passes the shaft S, which is rigidly attached to said sleeve and pinion.

H′ represents two slots or openings cut on the inner end of sleeve S.

n represents a sliding clutch collar having a circular groove, *n*′, and mounted loosely on pinion shaft S.

I′ represents a lever hinged to the bracket E′ by bolt *i*.

T represents a cone sprocket wheel, a series of which may be used and cast in separate pieces and united by clutches, as shown in figures 9, 13, & 15, or they may be cast in one piece. They are connected with the sliding clutch *n* and slide laterally with it on shaft S. By moving the lever I′ the clutch *n* and cones T may be made to engage or disengage with the revolving sleeve S′ and clutch N′, thereby throwing the transmitter in and out of gear.

T′ represents sprocket wheels fixed on a shaft and suitably journaled in bracket bearings attached to the cross-pieces L L of the runner frame.

607 V represents a bevel pinion on the opposite end of said shaft, which engages with a corresponding bevel wheel, V′, which is journaled and supported on a bracket, T^2, as shown in figure 7.

X′ represents a crank pin on the face of bevel wheel V′.

X represents a forked pitman journaling on said crank pin, and supported on its opposite end preferably by a roller, *r*, working in a slotted bracket, Y, shown in figures 16 & 17 and performing the functions of an ordinary wrist, but in a more efficient manner.

Bracket Y is preferably made in two parts, so as to be adjustable. y' represents a tram for roller r, which is allowed a small lateral motion independent of the motion of the driving bar m', which is reciprocated by the pitman.

This play of the roller r is important, as it imparts a sudden motion to the seeding devices at each end of the stroke, causing an instantaneous dropping of the seed.

The feet of bracket Y are slotted to allow of adjustment to reg-
608 ulate the play of the roller r, and the stroke of the pitman W represents an ordinary drive or sprocket chain.

w' represents a crank shaft pivoted to the frame A and carrying a roller, U, resting upon the drive chain W. It is made of sufficient weight to take up the slack of the drive chain when the machine is used as a yielding planter. It is shown as flanged and sliding laterally with the drive chain, but it may be smooth and made of a length corresponding with the width of the cone T.

Insert "E" in am'd't, June 22, '80.

Claims.

1. In a corn-planter having the rear main frame mounted on supporting wheels, the front runner frame hinged or pivoted to the main frame, and operated by an elevating and depressing lever pivoted to the main frame, having its front end slotted and connected to the runner frame by a bolt passing through said slot, in combination with the shaft d and the lifting hand-lever D rigidly attached to said shaft for elevating, depressing, and controlling the runner frame, substantially as herein set forth.

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609 [2. In combination with the centrally-pivoted slotted foot lever F, the shaft d, lifting hand lever D, with

See "B," June 15, '80. the locking devices for holding the lever F rigid in any desired fixed position, substantially as herein set forth.

3. In a corn-planter having the main frame mounted on ground wheels, and a runner frame hinged to the

Cancel & insert per "C," June 15, '80. main frame, having one or more sprocket wheels on the main frame, connected by a clutch device to suitable driving gear driven by the ground wheels, in combination with one or more sprocket wheels mounted on the runner frame and connected to a shaft and pitman for operating the seeding devices, the power being transmitted by means of a sprocket chain engaging with the sprocket wheels on the main frame and runner frame, substantially as herein set forth.

4. In a corn-planter having the seeding devices operate by means of sprocket wheels located on the

Cancel & insert per "D," June 15, '80. runner and main frames respectively and employing the transmitting sprocket
610 chain, in combination with the gravitating, tightening device suspended

from the main frame and resting on the drive chain, substantially as and for the purpose set forth.

5. The clutch for throwing the sprocket wheels on the main frame in and out of gear, composed substantially of the shaft S, pinion sleeve S′, lugs *g*, and the sliding clutch *n* attached to the sprocket wheels, as and for the purpose set forth.

6. In a corn-planter the slotted or open bracket Y, for connecting the pitman to the reciprocating bar, having the bearing or tramway Y′ for supporting a forked pitman, X, substantially as herein set forth.

7. In a corn-planter the bracket Y, made in two parts, *i i*, with the feet i^2 slotted for adjusting the bracket to the stroke of the pitman, substantially as herein set forth.

8. In a corn-planter the forked pitman X and wrist *r* in combination with the adjustable bracket Y, having the wrist bearing Y′, and attached to the reciprocating bar, substantially as and for the purpose set forth.

611 9. A seed-dropper, consisting of the pendulum valve P and the removable partition P′ supporting the valve P in the grain channel above the open heel of the runner by means of the bolt *p*, substantially as set forth and for the purpose specified.]*

[10.]* 6. The valve P made in two parts, O O′, and united by detachable fastening devices, whereby the lower portion is readily removed without disturbing the other parts of the seed-dropping mechanism, substantially as herein set forth.

612 In testimony whereof I have hereunto set my hand and seal in the presence of two subscribing witnesses.

MICHAEL RUNSTETLER.

Witness:
WARREN MUNGER.
BENJAMIN KUHNS.

613 *Oath.*

STATE OF OHIO, }
County of Montgomery, } *ss:*

Michael Runstetler, the above-named petitioner, being duly sworn, deposes and says that he verily believes himself to be the original and first inventor of the improvements in corn-planters described and claimed in the foregoing specification; that he does not know and does not believe that the same was ever before known or used; that the invention described and claimed in the annexed specification has not been patented to him nor, with his knowledge or consent, in any foreign country, and that he is a citizen of the United States of America and a resident of Dayton, Montgomery county, State of Ohio.

MICHAEL RUNSTETLER.

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* Words and sentences enclosed in brackets erased in original.

Sworn to and subscribed before me this 10th day of May, A. D. 1880.

[L. S.] WARREN MUNGER,
Notary Public in & for Montgomery County, Ohio.

[Endorsed:] 9339. $\frac{35}{73}$. Specification. U. S. Patent Office, May 17, 1880. Div. I.

614 Copy sent. L. $\frac{35}{73}$.

Room No. 116. 9939.

DEPARTMENT OF THE INTERIOR,
U. S. PATENT OFFICE,
WASHINGTON, D. C., *June 12th*, 1880.

M. Runstetler, James L. Norris, city:

"Corn-Planters." Filed May 17, 1880.

The 2d claim is anticipated by patent to J. Lane July 9, 1878, 205,752 (wheel plows).

The 3d and 4th claims by patents to C. E. Patrie Feb. 21, 1873, 136,260 (drills adj. rank), and J. G. and J. H. Stokesbury, Jan'y 30, 1877, 186,766 (corn).

The 5th claim by patents to Stokesbury (above cited) and A. G. Brown, Oct. 19, 1858, 21807 (grain-drills).

The 6th, 7th, and 8th claims are somewhat objectionable. See pencil notes.

The 9th claim by patents to L. Scofield Aug. 26, 1879, 218,833; A. and M. Runstetler, Nov. 26, 1878, 210,214; and A. C. Evans, July 1, 1879, 217,083 (corn).

A patent is withheld.

O. C. FOX, *Ex'm'r.*

ALLEN.

[Endorsed:] 9939. $\frac{35}{73}$. M. Runstetler. Rej. June 12, '80. Div. I.

615 Examiner's Room No. 116.

WASHINGTON, D. C., *June 15th*, 1880.

Hon. Commissioner of Patents.

In the Matter of the Application of MICHAEL RUNSTETLER for an Improvement in Corn-Planters. Filed May 17th, 1880. Serial No. 9939.

June 15, '80.

SIR: The above-named application is hereby amended as follows:

Erase, commencing with "the second part," line 3, page 2, and ending with "thereof," last line, same page, and insert:

"A." "The invention further consists of other features, all of which will be fully hereinafter described in detail."

"B." Erase claim 2.

Erase claim 3 and insert:

"2. In a corn-planter having the main runner frame mounted on ground wheels, a runner frame hinged to the main frame, and having a transversely arranged bar for reciprocating the seed-dropping devices, the combination of a sprocket wheel journaled on the main frame and connected
"C." by a clutch device with a driving gear on the ground wheel, a sprocket chain, a sprocket wheel fixed to a shaft journaled on the runner frame, the bevel gearing, and a pitman connecting said shaft with the transverse bar for reciprocating the latter to actuate the seed-droppers, all substantially as
616 herein shown and described."

Erase claims 4, 5, 6, 7, 8, and 9, and insert:

"3. In a corn-planting machine the slotted or open bracket Y for connecting the pitman to the reciprocating bar, having the bearing or tramway Y′ for supporting a forked pitman X, substantially as herein set forth.

4. In a corn-planting machine the bracket Y made in two
"D." parts, with the slotted feet for adjusting the bracket to the stroke of the pitman, substantially as shown and described.

5. In a corn-planting machine the forked pitman X and wrist *r*, in combination with the adjustable bracket Y, having the wrist bearing Y′ and attached to the reciprocating bar, substantially as and for the purpose described."

Change number of claim "10" to "6."

I respectfully resubmit this case for further consideration, and it is presumed that in its present state the application will be favorably considered.

The present second claim is, in my opinion, clearly patenta-
617 ble over the references cited, inasmuch as in the latter no reciprocating seed-dropper is connected with the sprocket wheel.

Respectfully, JAS. L. NORRIS, *Attorney.*

[Endorsed:] 9939. $\frac{3}{7}\frac{5}{3}$. W. Runstetler. Amend't. June 15, '80. United States Patent Office, Jun- 16, 1880. Div. I.

618 Copy sent. L. $\frac{3}{7}\frac{5}{3}$.

Room No. 116. 9939.

DEPARTMENT OF THE INTERIOR,
U. S. PATENT OFFICE,
WASHINGTON, D. C., *June 19th*, 1880.

M. Runstetler, Jas. L. Norris, city:

"Corn-Planters." Filed May 17, 1880.

The 2d claim presented by amendment is held anticipated by patents to W. U. Ewart, Oct. 23, 1877, 196,291, and A. and M. Runstetler, Nov. 26, 1878, 210,214 (corn).

A patent is withheld.

O. C. FOX, *Exam.*

ALLEN.

[Endorsed:] 9939. $\frac{3}{7}\frac{5}{3}$. M. Runstetler. Rej. June 19, '80. Div. I.

619 EXAMINER'S ROOM No. 116,
WASHINGTON, D. C., *June 22d*, 1880.

Hon. Commissioner of Patents.

In the Matter of the Application of MICHAEL RUNSTETLER for an Improvement in Corn-Planters. Filed May 17th, 1880. No. 9939.

SIR: The above-named application is hereby amended as follows: Insert at the end of the description:

"I do not broadly claim the operation of the seed slide in a seeding machine by means of sprocket wheels and a chain, as
E. in patent No. 196,291, and neither do I claim broadly the operation of the seeding devices by a gear connection with one of the supporting wheels, as in patent No. 210,214, as such are not my present invention."

In view of the above amendment I respectfully resubmit this case, and hope it will now receive favorable consideration.

The Ewart arrangement is very different from that of applicant. In Ewart projections on the sprocket chain operate a cam on the seed slide and reciprocate the latter. This is very different from applicant's device. In the Runstetler patents I fail to find an answer to the claim. In my opinion, the second claim should be allowed.

Respectfully,

JAMES L. NORRIS, *Attorney.*

[Endorsed:] 9939. $\frac{3}{7}\frac{5}{3}$. Michael Runstetler. Am'd't and arg't. June 22, 1880. U. S. Patent Office, Jun. 22, 1880.

620 *Memorandum of Fee Paid at U. S. Patent Office.*

$20, M.
Inventor, Michael Runstetler.
Patent to be issued to assignees.
Name of invention as allowed, corn-planter.
Serial No. 9939.
Date of payment, July 22d, 1880.
Fee, $20.
Solicitor, James L. Norris.
Date of circular of allowance, July 1st, 1880.
Send patent to —— ——.

[Endorsed:] U. S. Patent Office, Jul. 22, 1880.

621 9939. 1880. $\frac{35}{73}$.

No. 231,104. Fox.

Michael Runstetler, ass'or to the Farmers' Friend Manufacturing Company, of same place,
Of Dayton,
County of Montgomery,
State of Ohio.
Corn-planters.

Reissued July 11, 1882, No. 10155.

Rec'd May 17, 1880.
Petition, " " "
Affidavit, " " "
Specification, " " "
Drawing, 2 sheets, " " "
Model not required.
Cert. dep., —.
1. Cash, $15, May 17, 1880.
Add'l fee cert., —.
" " cash $20, July 22, 1880.
2. Examined July 1, 1880. O. C. Fox.
Issue, July 1, 1880. Arthur W. Crossley.
3. Patented Aug. 10, 1880.
Circular, July 1, 1880.
Wood & Boyd, Cinn., Ohio.
James L. Norris, assoc., present.

622 Div. I. 1880. E. & T.

Contents.

Application, 1, papers.
1. Rej. June 12, 1880.
2. Amend't A to D, June 15, '80.
3. Rej., June 19, 1880.

4. Amend't and ag't, June 22, 1880.
5. Br'f.
6.
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10.
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14.
15.
16.
17.
18.

Title: Improvement in corn-planters.
Ex'd: J. A. W., M. McK.
111. Seeders & planters, corn.

[Endorsed:] 5058. D., '84.

623 UNITED STATES PATENT OFFICE.

MICHAEL RUNSTETLER, of Dayton, Ohio, assignor to the Farmers' Friend Manufacturing Company, of same place.

Corn-Planter.

Specification forming part of Letters Patent No. 231,104, dated August 10, 1880; application filed May 17, 1880. (No model.)

To all whom it may concern:

Be it known that I, Michael Runstetler, a citizen of the United States, residing at Dayton, in the county of Montgomery and State of Ohio, have invented certain new and useful improvements in corn-planters, of which the following is a specification:

My invention relates to an improvement in corn-planters of the class employing a main frame mounted on wheels, which main frame is combined with a runner-frame in front, and so attached to the main frame that it may be either a rigid or yielding planter, and also employing cone-gears and driving-chains to actuate the dropping mechanism for planting, and adapted to be used either as a rigid or yielding planter.

My improvement consists, first, in the arrangement of a lifting hand-lever mounted upon a shaft and connected to the foot-lever centrally pivoted to the main frame, the forward end of which lever is hinged to the runner-frame, and the several parts being so arranged that the runner-frame may be controlled by either the hand-lever or foot-lever, or both, at the will of the operator, the hand-lever being combined with detachable fastening devices, so as to be

set in proper position to form a rigid planter, and so that the fastening devices can be dispensed with and the hand and foot levers used to control the operation of the machine when used as a yielding planter.

The invention further consists of other features, all of which will be fully hereinafter described in detail.

In the accompanying drawings, figure 1 is a side elevation, partly in section, of a corn-planter embodying the first features of my invention. Fig. 2 is a front elevation, partly in section, of the same. Fig. 3 is a broken plan view, partly in section, showing the connection between the hand and foot levers. Fig. 4 is an elevation showing one of the runners with my improved dropping devices. Fig. 5 is a vertical front elevation of the dropper mechanism. Fig. 6 is a side elevation of the same. Fig. 7 is a plan of the improved driving mechanism. Fig. 8 is a side elevation, partly in section, of the same, line *x x*, Fig. 7. Fig. 9 is a cross-section of the cone sprocket-wheels and clutch device. Fig. 10 is a horizontal elevation of part of the clutch device and drive-gear. Figs. 11 and 12 are elevations of the clutch with immediate connections broken and in section. Figs. 13 and 14 are elevations of one of the clutch sprocket-wheels. Fig. 15 is an elevation showing the back of one of the sprocket-wheels. Fig. 16 is a vertical elevation of the pitman-connection bracket on the dropper-rod. Fig. 17 is a plan view, partly in section, of the same. Fig. 18 is a perspective view of the clutch-lever.

A A′ represent the main frame; B, the axle; B′, grooved wheels; C′, the seat-standard; F, the foot-lever; N H L G, the runner-frame. These several parts are fully described in prior patents.

d represents a shaft journaled at one end to the main frame and at the other to the seat-standard.

c′ represents the journal-bracket at the seat standard, the foot-lever F being rigidly connected to and journaled on the shaft *d*.

D represents a hand-lever rigidly attached to shaft *d*.

E represents a segmental notch-plate rigidly fastened to the main frame A.

d′ represents a lock for lever D, passing through the shoulder of lever D, and engaging at one end with the segmental notch-plate E, and hinged at the other end to a bell-crank lever, d^2, the movement of which locks and unlocks the lifting-lever D.

When it is desired to operate the machine as a yielding planter the locking device *d′* is thrown out of connection with the segment-plate and secured by a hasp, d^3, the hand and foot levers then being free to vibrate with the runner-frame and under control of the operator. When the locking devices of the lifting-lever D are brought into operation the operator sets the runner-frame in any given position by means of lever D, the lock-lever holding it rigid, but under easy control of the hand; or the foot-lever may be used to assist in raising or lowering the frame, and the weight of the driver may be thrown upon the foot lever to force the runners into the ground if necessary.

624 P represents the dropper-valve placed in the grain-spout; *p*, a pivot-bolt on which the valve P oscillates.

P′ is a partition in the grain-spout, and held in a fixed position in the bottom portion thereof by means of the lugs R R, but readily detachable therefrom by removal of the bolt *p*, upon which it is suspended.

In the operation of valves of this kind great difficulty has been experienced in uniformly dropping the seed when used as a drill. If the valve is removed entirely the seed drops out too far in the rear to be well covered, and if the partition alone is removed the operation of the valve interferes with the regular dropping of the seed.

To obviate these difficulties I have made the lower portion of the valve which covers the grain-channel removable, so as to deposit the seed between the heels of the runners, beneath the surface of the ground, the grain-channel being always open for the continuous dropping of the seed.

Fig. 6 shows the preferred form of joint for making the valve detachable.

K represents the driving-gear attached to one of the main wheels, the preferred form being shown in Fig. 8.

K′ represents a pinion mounted or cast on sleeve S′, through which passes the shaft S, which is rigidly attached to said sleeve and pinion.

H′ represents two slots or openings cut on the inner end of sleeve S.

n represents a sliding-clutch collar having a circular groove, *n*′, and mounted loosely on pinion-shaft S.

I′ represents a lever hinged to the bracket E′ by bolt *i*.

T represents a cone sprocket-wheel, a series of which may be used, and cast in separate pieces and united by clutches, as shown in Figs. 9, 13, and 15; or they may be cast in one piece. They are connected with the sliding clutch *n*, and slide laterally with it on shaft S. By moving the lever I′ the clutch *n* and cones T may be made to engage or disengage with the revolving sleeve S and clutch N′, thereby throwing the transmitter in and out of gear.

T′ represents sprocket-wheels fixed on a shaft and suitably journaled in bracket-bearings attached to the cross-pieces L L of the runner-frame.

V represents a bevel-pinion on the opposits end of said shaft, which engages with a corresponding bevel-wheel, V′, which is journaled and supported on a bracket, T^2, as shown in Fig. 7.

X′ represents a crank-pin on the face of bevel-wheel V′.

X represents a forked pitman journaling on said crank-pin, and supported on its opposite end preferably by a roller, *r*, working in a slotted bracket, Y (shown in Figs. 16 and 17), and performing the functions of an ordinary wrist, but in a more efficient manner. Bracket Y is preferably made in two parts, so as to be adjustable.

y′ represent a tram for roller *r*, which is allowed a small lateral motion independent of the motion of the driving-bar *m*′, which is reciprocated by the pitman. This play of the roller *r* is important, as it imparts a sudden motion to the seeding devices at each end of the stroke, causing an instantaneous dropping of the seed.

The feet of bracket Y are slotted to allow of adjustment to regulate the play of the roller *r* and the stroke of the pitman.

W represents an ordinary drive or sprocket chain.

w' represents a crank-shaft pivoted to the frame A and carrying a roller, U, resting upon the drive-chain W. It is made of sufficient weight to take up the slack of the drive-chain when the machine is used as a yielding planter. It is shown as flanged and sliding laterally with the drive-chain, but it may be smooth and made of a length corresponding with the width of the cone T.

I do not broadly claim the operation of the seed-slide in a seeding-machine by means of sprocket-wheels and a chain, as in patent No. 196,291, and neither do I claim, broadly, the operation of the seeding devices by a gear-connection with one of the supporting-wheels, as in patent No. 210,214, as such are not my present invention.

I claim—

1. In a corn-planter having the rear main frame mounted on supporting-wheels, the front runner-frame hinged or pivoted to the main frame and operated by an elevating and depressing lever pivoted to the main frame, having its front end slotted and connected to the runner-frame by a bolt passing through said slot, in combination with the shaft *d* and the lifting hand-lever D, rigidly attached to said shaft, for elevating, depressing, and controlling the runner-frame, substantially as herein set forth.

2. In a corn-planter having the main runner-frame mounted on ground-wheels, a runner-frame hinged to the main frame, and having a transversely-arranged bar for reciprocating the seed-dropping device, the combination of a sprocket-wheel journaled on the main frame and connected by a clutch device with a driving-gear on the ground-wheel, a sprocket-chain, a sprocket-wheel fixed to a shaft journaled on the runner-frame, the bevel-gearing, and a pitman connecting said shaft with the transverse bar for reciprocating the latter to actuate the seed-droppers, all essentially as herein shown and described.

3. In a corn-planting machine, the slotted or open bracket Y, for connecting the pitman to the reciprocating bar, having the bearing or tramway Y', for supporting a forked pitman, X, substantially as herein set forth.

4. In a corn-planting machine, the bracket Y, made in two
625 parts, with the slotted feet for adjusting the bracket to the stroke of the pitman, substantially as shown and described.

5. In a corn-planting machine, the forked pitman X and wrist *r*, in combination with the adjustable bracket Y, having the wrist-bearing Y' and attached to the reciprocating bar, substantially as and for the purpose described.

6. The valve P, made in two parts, O O', and united by detachable fastening devices, whereby the lower portion is readily removed without disturbing the other parts of the seed-dropping mechanism, substantially as herein set forth.

In testimony whereof I have hereunto set my hand in presence of two subscribing witnesses.

MICHAEL RUNSTETLER.

Witnesses:
WARREN MUNGER,
BENJAMIN KUHNS.

(Here follow diagrams marked pp. 626 & 627.)

628 DEF'T'S EXHIBIT FILE OF COMPL'T'S REISSUED PATENT. Fred. W. Stevens, Notary Public & Acting Ex'r.

FARMERS' FRIEND M'F'G CO.
vs.
CHALLENGE CORN-PLANTER CO. } Equity.

(2–175.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of the reissue letters patent granted Michael Runstetler, assignor to the Farmers' Friend Manufacturing Company, July 11, 1882, number 10155, for improvement in corn-planter.

In testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 11th day of March, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

[Seal Patent Office, United States of America.]

BENJ. BUTTERWORTH,
Commissioner.

629 $30, 1 d'g, old pat.

To the Commissioner of Patents:

Your petitioner, Michael Runstetler, a citizen of the United States, residing at Dayton, in the county of Montgomery and State of Ohio, prays that he may be allowed to surrender the letters patent for an improvement in corn-planters granted to him August 10, 1880, whereof the Farmers' Friend Manufacturing Co., on whose behalf and with whose assent this application is made, is now sole owner by assignment, and that letters patent may be reissued to the said Farmers' Friend M'f'g Co. for the same invention upon the annexed amended specification. With this petition is filed an abstract of title duly certified as required in such cases.

And they hereby appoint Messrs. Wood & Boyd, a firm composed of Edmund E. Wood and Edward Boyd, their attorneys, with full

(No Model.) 2 Sheets—Sheet 1.

M. RUNSTETLER.

Corn Planter.

No. 231,104. Patented Aug. 10, 1880.

Fig. 3.

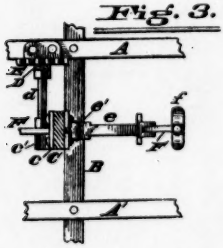
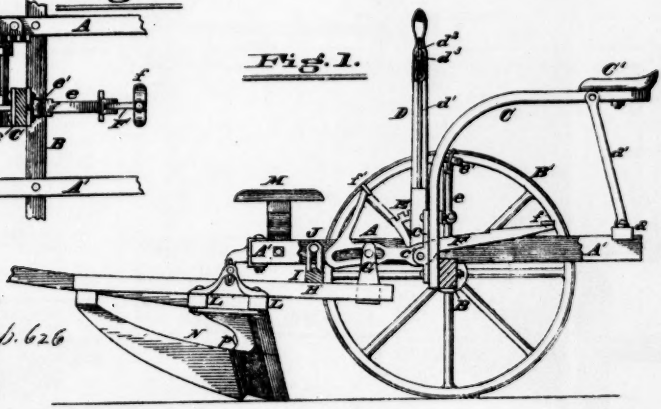


Fig. 1.



No. 357. The Farmers Friend Mfg Co. vs. The Challenge Corn Planter Co. sp. 626

Fig. 2.

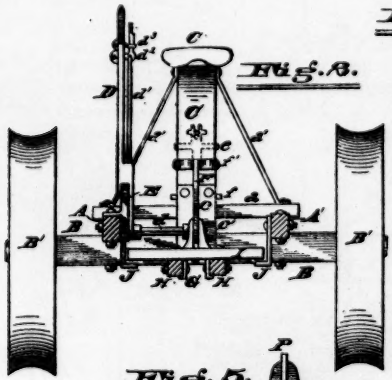


Fig. 6.

Fig. 4.

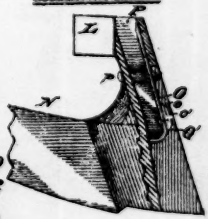


Fig. 5.

Attest

Jos. C. Jones

Cornelius Byl

Inventor

M. Runstetler

by Woods & Boyd

Attorneys &c.

(No Model.) 2 Sheets—Sheet 2.

M. RUNSTETLER.

Corn Planter.

No. 231,104. Patented Aug. 10, 1880.

Fig. 10.

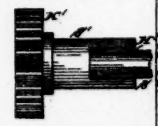


Fig. 7.

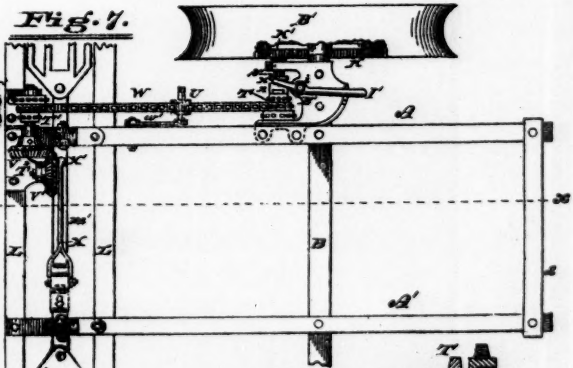


Fig. 15.

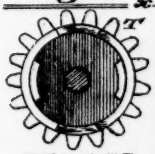
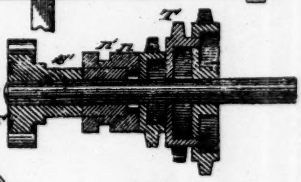


Fig. 11.

Fig. 9.



No. 357. The Farmers' Friend Mfg Co. & The Challenge Corn Planter Co. p. 627

Fig. 8.

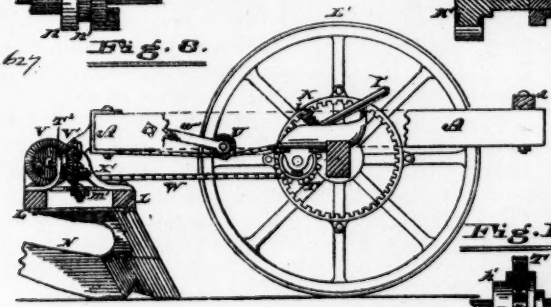


Fig. 12.

Fig. 13.

Fig. 14.

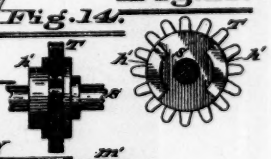


Fig. 16.

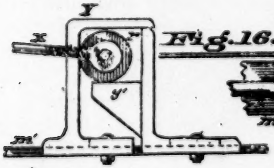


Fig. 17.

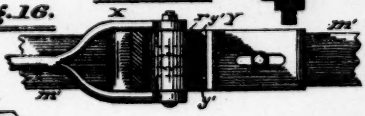


Fig. 18.

Witnesses
Jno. L. Jones
Cornelius Rgl.

Inventor
M. Runstetler
by Howard & Boyd
Attorneys &c.

(No Model.) 2 Sheets—Sheet 2.

M. RUNSTETLER.

Corn Planter.

No. 231,104. Patented Aug. 10, 1880.

Fig. 10.

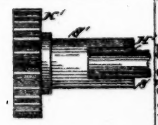


Fig. 7.

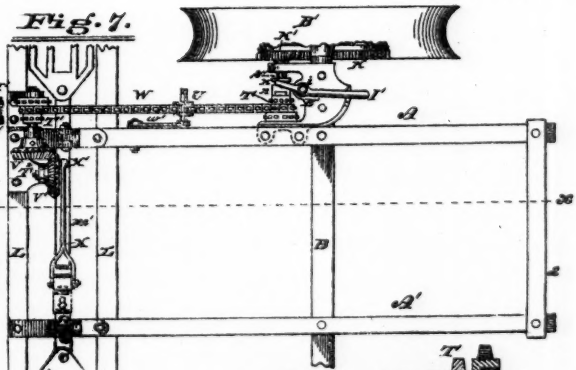


Fig. 15.

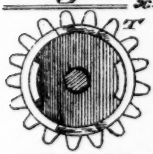
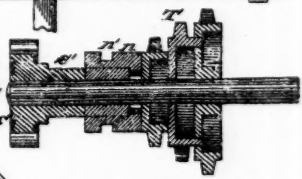


Fig. 11.

Fig. 9.



No. 357. The Farmers Friend Mfg Co. & The Chattanooga Corn Planter Co. } p. 627

Fig. 8.

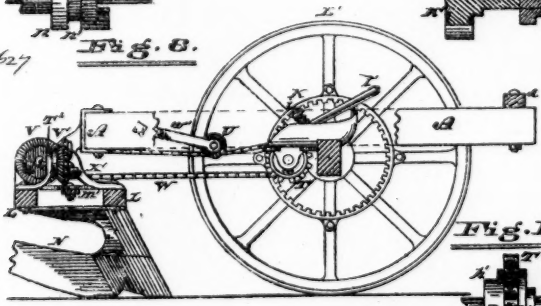


Fig. 12.

Fig. 13.

Fig. 14.

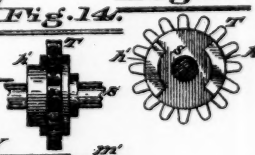


Fig. 17.

Fig. 16.

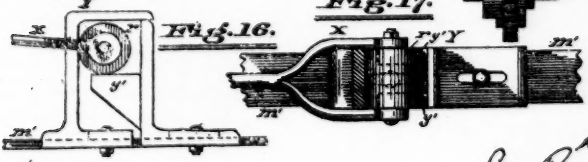


Fig. 18.

Inventor

M. Runstetler

by Hood & Boyd

Attorneys &c.

Attest

Jno. C. Jones

Cornelius Boyd

power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

MICHAEL RUNSTETLER.

Approved:
FARMERS' FRIEND M'F'G CO.,
B. KUHNS, *Pres't.*

630 The Hon. Commissioner of Patents will please recognize James L. Norris, of Washington, D. C., as our associate in the matter of the foregoing application.

WOOD & BOYD.

631 *Specification.*

To all whom it may concern:

Be it known that I, Michael Runstetler, a citizen of the United States, residing at Dayton, in the county of Montgomery and State of Ohio, have invented certain new and useful improvements in corn-planters, of which the following is a specification:

632 My invention relates to an improvement in corn-planters of the class employing a main frame mounted on wheels, which main frame is combined with a runner frame in front, and so attached to the main frame that it may be either a rigid or yielding planter, and also employing cone gears and driving chains to actuate the dropping mechanism for planting, and adapted to be used either as a rigid or yielding planter.

My improvement consists, first, in the arrangement of a lifting hand lever connected to a foot lever, which is pivoted to the main frame, the forward end of which lever is hinged to the runner frame, the several parts being so arranged that the runner frame may be controlled by either the hand lever or foot lever, or both, at the will of the operator.

My invention further consists in combining with the hand lever detachable fastening devices, so as to be set in proper position to form a rigid planter, and so that the fastening devices can be dispensed with and the hand and foot levers used to control the operation of the machine when used as a yielding planter.

The invention further consists of other features, all of which
633 will be fully hereinafter described in detail.

In the accompanying drawings, figure 1 is a side elevation, partly in section, of a corn-planter, embodying the first features of my invention.

Figure 2 is a front elevation, partly in section, of the same.

Figure 3 is a broken plan view, partly in section, showing the connection between the hand and foot lever.

Figure 4 is an elevation showing one of the runners with my improved dropping devices.

Figure 5 is a vertical front elevation of the dropper mechanism.

Figure 6 a side elevation of the same.

Figure 7 is a plan of the improved driving mechanism.

Figure 8 is a side elevation, partly in section, of the same, line $x\,x$, figure 7.

Figure 9 is a cross-section of the cone sprocket wheels and clutch device.

Figure 10 is a horizontal elevation of part of the clutch device and drive gear.

Figures 11 and 12 are elevations of the clutch with immediate connections broken and in section.

Figures 13 and 14 are elevations of one of the clutch sprocket wheels.

634 Figure 15 is an elevation showing the back of one of the sprocket wheels.

Figure 16 is a vertical elevation of the pitman connection bracket on the dropper rod.

Figure 17 is a plan view partly in section of the same.

Figure 18 is a perspective view of the clutch lever.

A A′ represent the main frame; B, the axle; B′, grooved wheels; C′, the seat standard; F, the foot levers; N H L G, the runner frame. These several parts are fully described in prior patents.

d represents a shaft journaled at one end to the main frame and at the other to the seat standard.

c′ represents the journal bracket at the seat standard, the foot lever F being rigidly connected to and journaled on shaft *d*.

D represents a hand lever rigidly connected to the foot lever by shafts, *d*, or other equivalent means.

E represents a segmental notch plate rigidly fastened to the main frame A.

d′ represents a lock for lever D passing through the shoulder of lever D and engaging at one end with the segmental notch
635 plate E and hinged at the other end to a bell crank lever, d^2, the movement of which locks and unlocks the lifting lever D.

When it is desired to operate the machine as a yielding planter the locking device *d′* is thrown out of connection with the segment plate and secured by a hasp, d^3, the hand and foot levers then being free to vibrate with the runner frame and under control of the operator. When the locking devices of the lifting lever D are brought into operation the operator sets the runner frame in any given position by means of lever D, the lock lever holding it rigid, but under easy control of the hand; or the foot lever may be used to assist in raising or lowering the frame, and the weight of the driver may be thrown upon the foot lever to force the runner into the ground, if necessary.

P represents the dropper valve placed in the grain spout; *p*, a pivot bolt on which the valve P oscillates.

P′ is a partition in the grain spout, and held in a fixed position in the bottom portion thereof by means of the lugs R R, but readily detachable therefrom by removal of the bolt *p*, upon which it is suspended.

In the operation of valves of this kind great difficulty has been experienced in uniformly dropping the seed when used as a
636 drill. If the valve is removed entirely the seed drops out too far in the rear to be well covered, and if the partition alone is removed the operation of the valve interferes with the regular dropping of the seed.

To obviate these difficulties I have made the lower portion of the valve which covers the grain channel removable, so as to deposit the seed between the heels of the runners, beneath the surface of the ground, the grain channel being always open for the continuous dropping of the seed.

Figure 6 shows the preferred form of joint for making the valve detachable.

K′ represents a pinion mounted or cast on sleeve S′, through which passes the shaft S, which is rigidly attached to said sleeve and pinion.

H′ represents two slots or openings cut on the inner end of sleeve S′.

n represents a sliding clutch collar having a circular groove, *n*′, and mounted loosely on pinion shafts S′.

I′ represents a lever hinged to the bracket E′ by bolt *i*.

T represents a cone sprocket wheel, a series of which may be used and cast in separate pieces and united by clutches, as shown in figures 9, 13, and 15, or they may be cast in one piece. They are connected with the sliding clutch *n* and slide laterally with it on
637 shaft S. By moving the lever I′ the clutch *n* and cones T may be made to engage or disengage with the revolving sleeve S and clutch N′, thereby throwing the transmitter in and out of gear.

T′ represent- sprocket wheels fixed on a shaft and suitably journaled in bracket bearings attached to the cross-pieces L L of the runner frame.

V represents a bevel pinion on the opposite end of said shaft, which engages with a corresponding bevel wheel, V′, which is journaled and supported on a bracket, T², as shown in figure 7.

X′ represents a crank pin on the face of bevel wheel V′.

X represents a forked pinion journaling on said crank pin and supported on its opposite end preferably by a roller, *r*, working in a slotted bracket, Y (shown in figures 16 and 17), and performing the functions of an ordinary wrist, but in a more efficient manner. Bracket Y is preferably made in two parts, so as to be adjustable.

y′ represents a train for roller *r*, which is allowed a small lateral motion independent of the motion of the driving bar *m*′, which is reciprocated by the pitman.

638 This play of the roller *r* is important, as it imparts a sudden motion to the seeding devices at each end of the stroke, causing an instantaneous dropping of the seed.

The feet of bracket Y are slotted to allow of adjustment to regulate the play of the roller *r* and the stroke of the pitman.

W represents an ordinary drive or sprocket chain.

w' represents a crank shaft pivoted to the frame A and carrying a roller, U, resting upon the drive chain W. It is made of sufficient weight to take up the slack of the drive chain when the machine is used as a yielding planter. It is shown as flanged and sliding laterally with the drive chain, but it may be smooth and made of a length corresponding with the width of the cone T.

I do not broadly claim the operation of the seed slide in a seeding machine by means of sprocket wheels and a chain, as in patent No. 196,291, and neither do I claim broadly the operation of the seeding devices by a gear connection with one of the supporting wheels, as in patent No. 210,214, as such are not my present invention.

639 1. In a corn-planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame the combination of a foot treadle and hand lever [arranged—so connected that they may]* adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners, substantially as herein set forth.

Cancel & insert per "A," June 17, '82.

Cancel & insert per "C," June 17, '82.

2. In a corn-planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, a foot treadle for elevating or depressing the runner frame in combination with a hand lock lever, [so arranged that]* the foot treadle and hand lever [may]* adapted to be used in conjunction for forcing and locking the runners into the ground or lifting and locking them out of the ground, substantially as herein set forth.

Cancel per "A," Insert per "C," June 17, '82.

3. In a corn-planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, a foot treadle for elevating or depressing the runner frame in combination with a hand lever rigidly connected therewith, [so]* that either hand lever or treadle may be used for forcing the runners into the ground or lifting them out of the ground, substantially as herein set forth.

See "A."

[4. In a corn-planter the combination of the foot treadle adapted to elevate the runner frame and the hand lever adapted to elevate or depress the same, and so connected as to move together, whether the power be applied to one or both, substantially as herein set forth.]*

Cancel & insert per "B," June 17, '82. Vague.

640

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5. In a corn-planter having the main runner frame mounted on ground wheels, a runner frame hinged to the main frame, and having a transversely arranged bar for reciprocating the seed-dropping device, the combination of a sprocket wheel journaled on the main

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*Words and sentences enclosed in brackets erased in original.

frame and connected by a clutch device with a driving gear on the ground wheel, a sprocket chain, and a sprocket wheel fixed to a shaft, with the transverse bar for reciprocating the latter to actuate the seed-droppers, all essentially as herein shown and described.

6. In a corn-planting machine the slotted or open bracket Y for connecting the pitman to the reciprocating bar, having the bearing or tramway Y′ for supporting a forked pitman, X, substantially as herein set forth.

7. In a corn-planting machine the bracket Y, made in two parts, with the slotted feet for adjusting the bracket to the stroke of the pitman, substantially as herein set forth.

641 8. In a corn-planting machine the forked pitman X and wrist *r*, in combination with the adjustable bracket Y, having the wrist bearing Y′ and attached to the reciprocating bar, substantially as herein set forth.

9. The valve P made in two parts, O O′, and united by detachable fastening devices, whereby the lower portion is readily removed without disturbing the other parts of the seed-dropping mechanism, substantially as herein set forth.

MICHAEL RUNSTETLER.
FARMERS' FRIEND M'F'G CO.,
B. KUHNS, *Pres't.*

Witnesses:
V. P. VAN HORNE.
GEORGE O. WARRINGTON.

642 STATE OF OHIO, }
Montgomery County, } *ss:*

Michael Runstetler, being duly sworn, says that he fears original patent No. 231,104, which he now seeks to reissue, is inoperative or defective because of the restricted character of its claims, the first claim of said original patent, which refers to the combination of a hand-lever with a foot lever, being limited to a slotted foot lever combined with a hand lever by means of a shaft, whereas in fact he was the first to combine with an elevating or depressing foot lever a hand piece moving in conjunction with said foot lever and adapted to be used independently or in conjunction with said hand lever, and he is entitled to protection therefor. This error or insufficiency arose without any fraudulent or deceptive intention on his part and which he seeks to correctly reissue.

MICHAEL RUNSTETLER.

Sworn to before me this 20th day of April, 1882.
[L. S.] GRAFTON C. KENNEDY,
Notary Public in & for Montgomery County, Ohio.

[Endorsed:] U. S. Patent Office, April 28, 1882.

643 STATE OF OHIO, } ss:
County of Montgomery, }

Michael Runstetler, the above-named petitioner, being duly sworn, deposes and says that he verily believes that his aforesaid letters patent are inoperative by reason of a defective specification, and that the error arose by inadvertence without any fraudulent or deceptive intent, and that he verily believes himself to be the first and original inventor of the improvement set forth and claimed in this amended specification and does not believe that the same was ever before known or used.

MICHAEL RUNSTETLER.

Sworn to and subscribed before me this 10th day of April, 1882.
[L. S.] GEORGE O. WARRINGTON,
Notary Public in & for Montgomery County, Ohio.

644 STATE OF OHIO, } ss:
Montgomery County, }

Michael Runstetler, being duly sworn, says that he fears original patent No. 231,104, granted him August 10th, 1880, and assigned to the Farmers' Friend Manufacturing Company of said Dayton, which he, with the consent of said assignee, now sole owner of said patent, now seeks to reissue, is inoperative or defective because of the restricted character of its claims, the first claim of said original patent, which refers to the combination of a hand lever with a foot lever, being limited to a slotted foot lever combined with a hand lever by means of a shaft, whereas in fact he was the first to combine with an elevating or depressing foot-lever a hand piece moving in conjunction with said foot lever and adapted to be used independently or in conjunction with said hand lever, and the said assignee is entitled to protection therefor. This error or insufficiency arose without any fraudulent or deceptive intention on his part and which he seeks to correct by reissue.

MICHAEL RUNSTETLER.

645 Sworn to before me this 12th day of May, A. D. 1882.
[L. S.] GEORGE O. WARRINGTON,
Notary Public, Montgomery County, Ohio.

[Endorsed:] 61313. $\frac{198}{62}$. U. S. Patent Office. May 15, 1882. M. Runstetler.

646 & 647 (2–173.)

Assignor: Michael Runstetler.
Assignee: The Farmers' Friend Manufacturing Company of Dayton, Ohio.
Date of assignment: May 10, '80.
Date of record: July 19, '80.
Invention: Corn-planter; spec'n executed; about to apply, Aug. 10, '80. # 231,104.

Territory assigned: His right, the patent to issue to the assignee.
Liber: R. 25.
Page: 95.

[Endorsed:] 61313. U. S. Patent Office, May 1, 1882.

(2–187.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

Wood & Boyd:

Application of Michael Runstetler for reissue of letters patent No. 231,104, dated August 10, 1880, for improvement in "corn-planter," assignor to the Farmers' Friend Manufacturing Company.

I certify that the annexed is a true copy from the digest of assignments in this division of all assignments of undivided interest found of record under or relating to the aforesaid letters patent up to and including April 27, 1882.

P. E. WILSON,
For Chief of Assignment Division.

No other ass't appears of record up to & including Jan. 17, '82.
SLAUGHTER.

[Endorsed:] (2–187.) Reissue. Certificate of title.

648

Copy sent. L. R. B.

Room No. 50. 61313.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *June* 16, 1882.

M. Runstetler, care James L. Norris, present:

Corn-planter. May 15, '82. Reissue of No. 231,104. Aug. 10, '80.

The 1st & 2nd claims are objectionable in form, "so connected that they may be used."
The 4th, also vague and sufficiently covered by other claims.
Patent withheld.

O. C. FOX, *Ex.*

[Endorsed:] 61313. $\frac{198}{62}$. M. Runstetler. Rejection, June 16, '82. Div. 1.

649 Examiner's Room, No. 50. Serial 61313.

WASHINGTON, D. C., *June* 16, 1882.

In the Matter of the Application of MICHAEL RUNSTETLER for an Improvement in Corn-Planters. Reissue. Filed June 17, '82. April 28, '82.

Hon. Commissioner of Patents.

SIR: The above application is hereby amended as follows:

In first claim erase the words "so connected" and insert "arranged."

"A"

In second claim erase the word "so."

In third claim erase the word "so."

Erase fourth claim and insert:

"4. The combination, in a corn-planter, having the rear main frame mounted on supporting wheels and a front runner frame hinged or pivoted to the main frame of a foot treadle for elevating the runner frame, and a hand lever for elevating or depressing the same, both arranged to move simultaneously when either is acted upon by an operator."

"B"

Respectfully, JAS. L. NORRIS,
Att'y for M. Runstetler.

[Endorsed:] 61313. $\frac{198}{62}$. M. Runstetler. Amend't- A. [illegible] original 17, '82. U. S. Patent Office, June 17, 1882. Div. 1. with a foot [illegible]th a hand [illegible]ing

650 Examiner's Room No. —. Serial 61313.

WASHINGTON, D. C., *June* 17, 1882.

In the Matter of the Application of MICHAEL RUNSTETLER for an Improvement in Corn-Planters. Reissue. Filed April 28, '82.

June 17, '82.

Hon. Commissioner of Patents.

SIR: The above-named application is hereby amended as follows:

In the 1st claim erase the words "arranged that they may" and insert "adapted to."

"C."

In the second claim erase the words "arranged that."

In the same claim erase "may" and insert "adapted to."

Respectfully, JAS. L. NORRIS,
Att'y for M. Runstetler.

[Endorsed:] 61313. $\frac{198}{62}$. M. Runstetler. Amend't C. June 17, '82. U. S. Patent Office, June 17, 1882. Div. 1.

651 (2–031.) 61313.

Issue division. All communications should be addressed to "The Commissioner of Patents, Washington, D. C."

DEPARTMENT OF THE INTERIOR,
U. S. PATENT OFFICE,
WASHINGTON, D. C., *June* 19, 1882.

Michael Runstetler, ass'or, c. o. J. L. Norris, asso.

SIR: Your application for reissue of patent No. 231,104 for improvement in corn-planters has been examined and allowed.

The patent will be forwarded to you as soon as practicable in due order of business.

Very respectfully,

E. M. MARBLE,
Commissioner of Patents.

652 Serial No. —. 2 cases.

Memorandum of Incomplete Reissue Application of Andrew Runstetler.

Invention.
Petition.
Affidavit, no ownership.
Pap's to att'y May 1, '82.
Specification.
Drawing.
Fees.

653 ISSUE DIVISION, U. S. PATENT OFFICE,
WASHINGTON, D. C., 7, 1, 1882.

Mr. Fox, examiner.

Application of Runstetler.

See construction of claim 5: The hinged runner frame has the trans't arranged bar and seed-dropping device. If and were inserted it would make the main frame carry the transverse bar, &c.

654 Serial No. 61313. Ex'r Book No. —.

Reissue No. 10155. 1882. Fox. $\frac{198}{62}$

Michael Runstetler, ass'or to the Farmers' Friend Manufacturing Company, of same place,

Of Dayton,
County of Montgomery,
State of Ohio.
Invention, corn-planter.

Parts of application filed.
Petition, April 28, 1882.
Affidavit, May 15, "
Specification, Ap'l 28, 1882.
Drawing 2 sheets, Ap'l 28, 1882.
Old patent, " " "
Abstract of title, May 1, "
Cert. deposit, —.

2. Cash, $30, April 28, 1882.
App. filed complete May 15, 1882.
No. and date of original patent, 231,104, Aug. 10, 1880.
3. Examined June 17th, '82. O. C. Fox.
Countersigned June 19, '82. J. W. Babson, for Commissioner.
Notice of allowance, June 19, 1882.
Reissued July 11, 1882.
Att'y or P. O. address: Wood & Boyd, Cinn., Ohio.
James L. Norris, asso., present.

655 Class —. Div. 1.

1882.

Contents.

Application papers.
1. Rej. June 16th, '82.
2. Amend't- "A," " B," June 17, '82.
3. Amend't " C," June 17, '82.
4. B'f.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.
Title: Improvement in corn-planters.
111. Seeders, corn.

Ex'd: E. A. M.
[Torn] H.

[Endorsed:] No. 789. Equity. Challenge Corn-Planter Com. Def't's exhibits.
5058. D., '84.

(Here follow diagrams marked pp. 656 & 657.)

2 Sheets—Sheet 1.

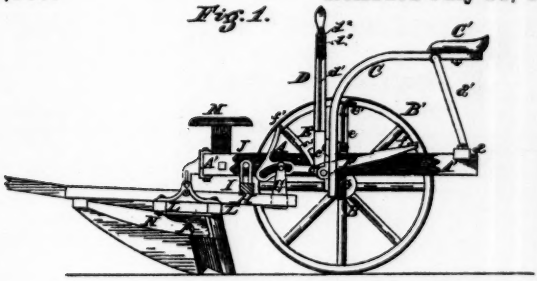
M. RUNSTETLER.

Assignor to the FARMER'S FRIEND MANUFACTURING COMPANY.

CORN PLANTER.

No. 10,155. Reissued July 11, 1882.

Fig. 1.



No. 359.
The Farmers Friend Mfg. Co.
v.
The Challenge Corn Planter Co.
p. 656

Fig. 2.

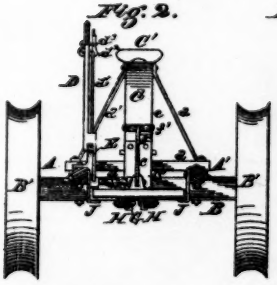


Fig. 6.

Fig. 4.

Fig. 3.

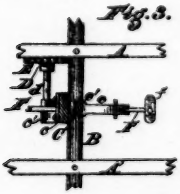
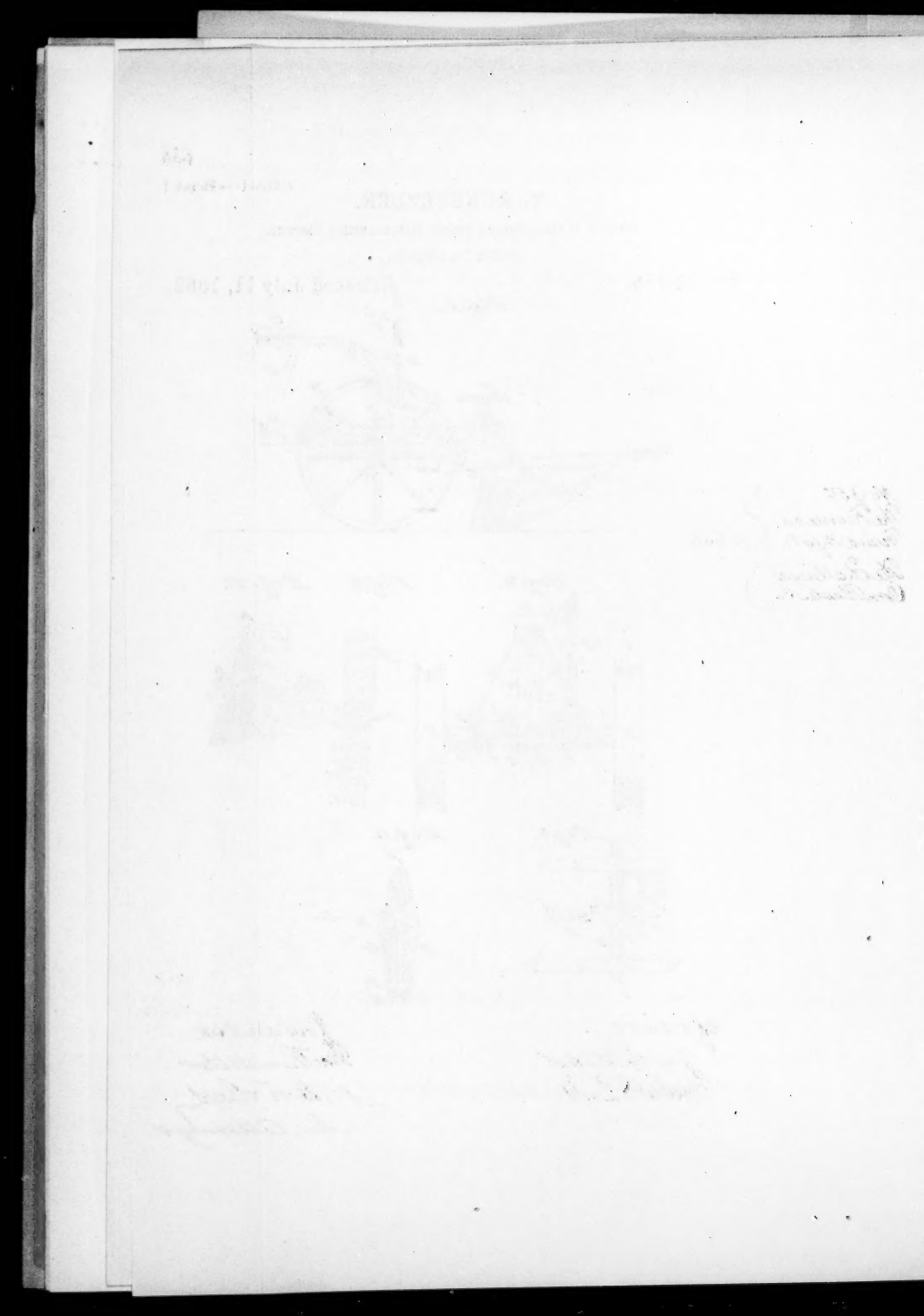


Fig. 5.

Attest,
Jno. E. Hales.
Herbert P. Cook.

Inventor,
M. Runstetler
by Wood & Boyd
his Attorneys.



2 Sheets—Sheet 2.

M. RUNSTETLER.

Assignor to the FARMER'S FRIEND MANUFACTURING COMPANY.

CORN PLANTER.

No. 10,155. Reissued July 11, 1882.

Fig. 7.

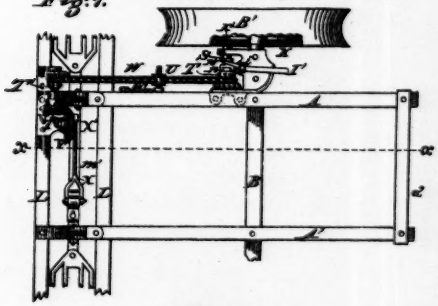


Fig. 10.

Fig. 16.

Fig. 11.

No. 359. The Farmers Friend Mfg Co. The Challenge Corn Planter Co. } p. 657

Fig. 9.

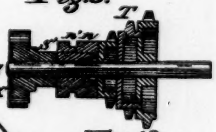


Fig. 8.

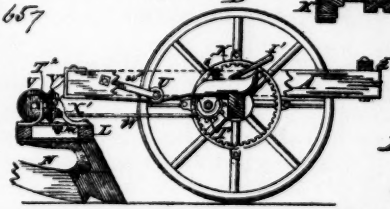


Fig. 12.

Fig. 13.

Fig. 14.

Fig. 16.

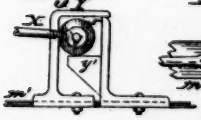


Fig. 17.

Fig. 18.

Attest,
Jno. E. Wilds
Herbert P. Cook

Inventor,
Chas. Runstetler,
by Wood & Boyd
his Attorneys &c.

658 UNITED STATES PATENT OFFICE.

MICHAEL RUNSTETLER, of Dayton, Ohio, assignor to the Farmers' Friend Manufacturing Company, of same place.

Corn-Planter.

Specification forming part of Reissued Letters Patent No. 10155, dated July 11, 1882; original No. 231,104, dated August 10, 1880; application for reissue filed May 15, 1882.

To all whom it may concern:

Be it known that I, Michael Runstetler, a citizen of the United States, residing at Dayton, in the county of Montgomery and State of Ohio, have invented certain new and useful improvements in corn-planters, of which the following is a specification:

My invention relates to an improvement in the corn-planters of the class employing a main frame mounted on wheels, which main frame is combined with a runner frame in front and so attached to the main frame that it may be either a rigid or yielding planter, and also employing cone-gears and driving-chains to actuate the dropping mechanism for planting, and adapted to be used either as a rigid or yielding planter.

My improvement consists, first, in the arrangement of a lifting hand-lever connected to a foot-lever which is pivoted to the main frame, the forward end of which lever is hinged to the runner-frame, the several parts being so arranged that the runner-frame may be controlled by either the hand-lever or foot-lever, or both, at the will of the operator.

My invention further consists in combining with the hand-lever detachable fastening devices, so as to be set in proper position to form a rigid planter, and so that the fastening devices can be dispensed with and the hand and foot levers used to control the operation of the machine when used as a yielding planter.

The invention further consists of other features, all of which will be fully hereinafter described in detail.

In the accompanying drawings, figure 1 is a side elevation, partly in section, of a corn-planter embodying the first features of my invention. Fig. 2 is a front elevation, partly in section, of the same. Fig. 3 is a broken plan view, partly in section, showing the connection between the hand and foot levers. Fig. 4 is an elevation showing one of the runners with my improved dropping devices. Fig. 5 is a vertical front elevation of the dropper mechanism; Fig. 6, a side elevation of the same. Fig. 7 is a plan of the improved driving mechanism. Fig. 8 is the side elevation, partly in section, of the same, line *x x*, Fig 7. Fig 9 is a cross-section of the cone sprocket-wheels and clutch device. Fig. 10 is a horizontal elevation of part of the clutch device and drive-gear. Figs. 11 and 12 are elevations of the clutch, with immediate connections broken and in sections. Figs. 13 and 14 are elevations of one of the clutch sprocket-wheels. Fig. 15 is an elevation showing the back of one of the sprocket-wheels. Fig 16 it a vertical elevation of the pitman-connection

bracket on the dropper rod. Fig. 17 is a plan view, partly in section, of the same. Fig. 18 is a perspective view of the clutch-lever.

A A′ represent the main frame; B, the axle; B′, grooved wheel; C′, the seat-standard; F, the foot-lever; N H L G, the runner-frame. These several parts are fully described in prior patents.

d represents a shaft journaled at one end in the main frame and at the other to the seat-standard.

c′ represents the journal-bracket at the seat-standard, the foot-lever F being rigidly connected to and journaled on shaft *d*.

D represents a hand-lever rigidly connected to the foot-lever by shaft *d* or other equivalent means.

E represents a segmental notch-plate rigidly fastened to the main frame A.

d′ represents a lock for lever D, passing through the shoulder of lever D and engaging at one end with the segmental notch-plate E, and hinged at the other end to a bell-crank lever, d^2, the movement of which locks and unlocks the lifting-lever D.

When it is desired to operate the machine as a yielding planter the locking device *d′* is thrown out of connection with the segment-plate, and secured by a hasp, d^3, the hand and foot levers then being free to vibrate with the runner-frame and under control of the operator. When the locking devices of the lifting-lever D are brought into operation the operator sets the runner-frame in any given position by means of lever D, the lock-lever holding it rigid, but under easy control of the hand; or the foot lever may be used to assist in raising or lowering the frame, and the weight of the driver may be thrown upon the foot-lever to force the runners into the ground, if necessary.

659 P represents the dropper-valve placed in the grain-spout; *p*, a pivot-bolt on which the valve P oscillates.

P′ is a partition in the grain-spout, and held in a fixed position in the bottom portion thereof by means of the lugs R R, but readily detachable therefrom by removal of the bolt *p*, upon which it is suspended.

In the operation of valves of this kind great difficulty has been experienced in uniformly dropping the seed when used as a drill. If the valve is removed entirely, the seed drops out too far in the rear to be well covered, and if the partition alone is removed the operation of the valve interferes with the regular dropping of the seed.

To obviate these difficulties I have made the lower portion of the valve which covers the grain-channel removable, so as to deposit the seed between the heels of the runners, beneath the surface of the ground, the grain-channel being always open for the continuous dropping of the seed.

Fig. 6 shows the preferred form of joint for making the valve detachable.

K′ represents a pinion mounted or cast on sleeve S′, through which passes the shaft S, which is rigidly attached to said sleeve and pinion.

H′ represents two slots or openings cut on the inner end of sleeve S′.

n represents a sliding-clutch collar having a circular groove, *n′*, and mounted loosely on pinion-shafts S.

I′ represents a lever hinged to the bracket E′ by bolt *i*.

T represents a cone sprocket-wheel, a series of which may be used, and cast in separate pieces and united by clutches, as shown in Figs. 9, 13, and 15; or they may be cast in one piece. They are connected with the sliding clutch *n*, and slide laterally with it on shaft S. By moving the lever I′ the clutch *n* and cones T may be made to engage or disengage with the revolving sleeve S′ and clutch N′, thereby throwing the transmitter in and out of gear.

T′ represents sprocket-wheels fixed on a shaft and suitably journaled in bracket-bearings attached to the cross-pieces L L of the runner-frame.

V represents a bevel-pinion on the opposite end of said shaft which engages with a corresponding bevel-wheel V′, which is journaled and supported on a bracket, T^2, as shown in Fig. 7.

X′ represents a crank-pin on the face of bevel-wheel V′.

X represents a forked pinion journaling on said crank-pin, and supported on its opposite end preferably by a roller, *r*, working in a slotted bracket, Y (shown in Figs. 16 and 17), and performing the functions of an ordinary wrist, but in a more efficient manner. Bracket Y is preferably made in two parts, so as to be adjustable.

y′ represents a tram for roller *r*, which is allowed a small lateral motion independent of the motion of the driving-bar *m′*, which is reciprocated by the pitman. This play of the roller *r* is important, as it imparts a sudden motion to the seeding devices at each end of the stroke, causing instantaneous dropping of the seed. The feet of bracket Y are slotted to allow of adjustment to regulate the play of the roller *r* and the stroke of the pitman.

W represents an ordinary drive or sprocket chain.

w′ represents a crank-shaft pivoted to the frame A and carrying a roller, U, resting upon the drive-chain W. It is made of sufficient weight to take up the slack of the drive-chain when the machine is used as a yielding planter. It is shown as flanged and sliding laterally with the drive-chain, but it may be smooth and made of a length corresponding with the width of the cone T.

I do not broadly claim the operation of the seed-slide in a seeding-machine by means of sprocket-wheels and a chain, as in patent No. 196,291, and neither do I claim broadly the operation of the seeding devices by a gear-connection with one of the supporting-wheels, as in patent No. 210,214, as such are not my present invention.

I claim—

1. In a corn-planter having the rear main frame mounted on supporting-wheels and the front runner-frame hinged or pivoted to the main frame, the combination of a foot-treadle and a hand-lever adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners, substantially as herein set forth.

2. In a corn-planter having the rear main frame mounted on supporting-wheels and the front runner-frame hinged or pivoted to the main frame, a foot-treadle for elevating or depressing the runner-frame, in combination with a hand lock-lever, the foot-treadle and hand-lever adapted to be used in conjunction for forcing and locking the runners into the ground or lifting and locking them out of the ground, substantially as herein set forth.

3. In a corn-planter having the rear main frame mounted on supporting-wheels and the front runner-frame hinged or pivoted to the main frame, a foot-treadle for elevating or depressing the runner-frame, in combination with a hand-lever rigidly connected therewith, that either hand-lever or treadle may be used for forcing the runners into the ground or lifting them out of the ground, substantially as herein set forth.

4. The combination, in a corn-planter having the rear main frame mounted on supporting wheels and a front runner-frame hinged or pivoted to the main frame, of a foot-treadle for elevating the runner-frame, and a hand-lever for elevating or depressing the same, both arranged to move simultaneously when either is acted upon by an operator.

660 5. In the corn-planter having the main runner-frame mounted on ground-wheels, a runner-frame hinged to the main frame, and having a transversely-arranged bar for reciprocating the seed-dropping device, the combination of a sprocket-wheel journaled on the main frame and connected by a clutch device with a driving-gear on the ground-wheel, a sprocket-chain, and a sprocket-wheel fixed to a shaft with the transverse bar for reciprocating the latter to actuate the seed-droppers, all essentially as herein shown and described.

6. In a corn-planting machine, the slotted or open bracket Y for connecting the pitman to the reciprocating bar, having the bearing or tramway Y′ for supporting a forked pitman, X, substantially as herein set forth.

7. In a corn-planting machine, the bracket Y, made in two parts, with the slotted feet for adjusting the bracket to the stroke of the pitman, substantially as herein set forth.

8. In a corn-planter machine, the forked pitman X, and wrist *r*, in combination with the adjustable bracket Y, having the wrist-bearing Y′ and attached to the reciprocating bar, substantially as herein set forth.

9. The valve P, made in two parts, O O′, and united by detachable fastening devices, whereby the lower portion is readily removed without disturbing the other parts of the seed-dropping mechanism, substantially as herein set forth.

MICHAEL RUNSTETLER.

Witnesses:
V. P. VAN HORNE.
GEORGE O. WARRINGTON.

661 THE UNITED STATES OF AMERICA, }
Western District of Michigan, Southern Division, } *ss:*

I, Henry M. Hinsdill, clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, do hereby certify that the foregoing is a true and compared copy of the files and records and the whole thereof in the proceedings of said court in said entitled cause.

Witness my official signature and the seal of said court, at Grand Rapids, this 21st day of September, in the year of our Lord one thousand eight hundred and eighty-five.

{ Seal of U. S. Circuit Court, Western District of Mich., Southern Division. }

HENRY M. HINSDILL, *Clerk,*
By —— ——, *Deputy.*

Endorsed on cover: W. Michigan C. C. U. S. No. 359. The Farmers' Friend Manufacturing Company, appellant, *vs.* The Challenge Corn-Planter Company. Filed October 9, 1885.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 92.

THE FARMERS FRIEND MANUFACTURING CO.

APPELLANT,

vs.

THE CHALLENGE CORN PLANTER CO.

BRIEF FOR APPELLANT.

E. E. WOOD AND
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Of Counsel for Appellant.

C. SOUER & CO., PRINT, CINCINNATI.

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THE CHALLENGE CORN PLANTER CO., *Respondent*.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

BRIEF FOR APPELLANT.

STATEMENT.

The bill of complaint in this case was filed by The Farmers' Friend Manufacturing Company against The Challenge Corn Planter Company, and prayed for an injunction, profits and damages, on account of the infringement by the defendant of re-issue letters patent No. 10,155, issued to the complainant as the assignee of Michael Runsteller, July 11, 1882, for improvements in corn planters. (Rec. 11.)

The complainant is an Ohio corporation engaged in the manufacture and sale of the patented improvements at Dayton, in that State; and the defendant is

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The complainant is an Ohio corporation engaged in the manufacture and sale of the patented improvements at Dayton, in that State; and the defendant is

a Michigan corporation, which commenced the manufacture and sale of the alleged infringing corn planter at Grand Haven, in that State, since the date of said re-issue.

The answer of the defendant denies infringement and attacks the novelty of the invention and the validity of the re-issue. (Rec. 53, 92.)

A motion for a preliminary injunction was made, argued, and allowed after consideration of nearly all the facts finally shown. (Rec. 46, 48, 49.)

Subsequently a motion was made to dissolve the injunction, which motion was argued and overruled after consideration of all the facts finally in the case. (Rec. 78, 81.)

Afterward a petition was filed to modify said injunction, which, on argument, was denied. (Rec. 82, 95.)

The general replication was filed, and proofs were taken by both parties.

The cause came on for final hearing upon the pleadings and proofs before Judges Baxter and Withey, each of whom filed an opinion; that of the Circuit Judge finding that the re-issue was not for the same invention as the original patent, and therefore invalid (Rec. 108); and the decree signed and ordered to be entered by him, found that the equities of the case were with the defendant, dissolved the injunction and dismissed the bill of complaint.

The District Judge did not concur in the opinion of the presiding judge, and filed a dissenting opinion

showing that the re-issue was valid, and the equities of the case with the complainant. (Rec. 110.)

A petition for a re-hearing was filed by the complainant during the term at which said decree was entered, but the Court not being able to hear the same during that term, vacated and set aside said decree, continued the cause until the next term, and reserved the prayer of said petition for consideration by the Circuit Justice, and one or both of the other judges. (Rec. 123.)

At the following term said decree was re-entered. (Rec. 124.)

And the petition for a re-hearing came on to be heard before the Circuit Justice, who denied its prayer, because a consideration of the petition would involve a review of the decision of the Circuit Judge. (Rec. 125.)

And thereupon tne present appeal was allowed. (Rec. 125.)

ERRORS.

The Court erred:

1. In dismissing the bill.

2. In its reasons assigned therefor,

3. In finding that the re-issue patent was not for the same invention "covered" by the original.

4. In giving weight to the question whether the defendant's planter infringed the first claim of the original patent, and in holding that it did not.

5. In finding that complainant's expert admitted that the defendant's planter would not infringe the first claim of the original patent.

6. In finding that counsel for complainant, in the argument of the cause, conceded that the defendant's planter would not infringe the first claim of the original patent.

7. In holding that the inventor, by virtue of his correspondence with the Patent Office, should be restricted to the specific combination of the first claim of the original patent, and that everything else was anticipated by others.

UTILITY.

The practical utility of the patented invention is well shown by the record; and practical utility has always been considered an important factor in determining the novelty of an alleged invention, when the novelty has been attacked by prior devices which lacked the elements of practical application to the uses for which the device was intended. (Smith vs. Goodyear D. V. Co., 93 U. S. 486, 495. Soom Co. vs. Higgins, 105 U. S. 580, 591.)

We think the invention a broad one, never approached by any of the inventor's forerunners, but admitting it to be a narrow one, for sake of the argument, we still claim that the difference between "success and failure" should in all equity, determine in favor of the

patented device which has been shown to have been remarkably successful and to have revolutionized the corn planter trade, within four years after its introduction.

Hand and foot levers have long been used on many kinds of machines, and are shown in many patents of earlier date than the complainant's, but at the time the complainant commenced the manufacture of the patented improvements, none of the numerous manufacturers of corn planters had adopted or supplied means for controlling the planter upon the principle described in complainant's patent.

The need of such an arrangement had long been felt and many contrivances had been tried, without success, before the complainant's planter was put on the market in 1879, when, so obvious were its advantages that it became a favorite from the start, and at the time the testimony was taken in 1884, had a record of about 22,000 sold and in operation in nearly every State of the Union.

At the date of the invention about 1200 patents had been issued for improvements in corn planters, but the exhibit champion planter was the only one on the market which employed a hand and foot lever of any kind, (Lefevre depos. Rec. 139), and that planter has since been so changed that it is scarcely distinguishable from that of the complainant. (Ans. 32. p. 197, and model, and Kelly testimony x ques. 7, p. 272.)

Among the first to appropriate the invention was The Wait Manufacturing Co. named in the pleadings,

because it was such a good thing they were obliged to have it; (Ans. 15, p. 173) and a large number of other manufacturers have since adopted somewhat similar devices. (Rec. 139.)

At the date of the patented invention there were two classes of planters in the market. One what is known as a rigid planter—that is one in which the runner frame is rigidly attached to the main or rear frame; and the other a flexible planter—that is one in which the runner frame is hinged to the main frame.

The testimony shows that corn is planted from one to five inches deep, depending on the nature and condition of the soil. (Ans. 28, p. 150.)

These conditions may, and often do, vary in the same field; so it will readily be seen that a machine which is under the control of the operator to meet all such conditions, has a most decided advantage over others which are not.

The arrangement of the patentee produced this new and useful result, never attained before, and to that fact is due the great success and popularity of the planter.

On this point Judge Withey, in deciding the motion for injunction said:

"It is very clear that the improvements in corn-planters covered by the reissue and relied upon in this case by complainant, produced both new and useful results over the Beedle and Kelly machine exhibited here or any other shown to have been known and in use at the date of the invention." (Rec. 47.)

And again in his dissenting opinion says:

"Of course, hand levers and foot levers are not new, and they have been employed in machinery to be operated separately and combined, but the changes made by Runsteller give those practical results, which enable a corn-planter to be operated in a practical way, never before attained, and therefore in a new and useful manner." (Rec. 112.)

Mr. Justice Matthews in delivering the opinion of this Court in Eames vs. Andrews, 122 U. S. 40, 47, says:

"The extent of this litigation attests at least the utility of the process supposed to be described in the patent, as it shows and measures the extent of the public demand for its use. This is further shown by the statement of one of the complainants in the present cause when examined as a witness, who says that large numbers of wells, etc., are in use probably in every State of the Union, &c."

The above warrants the introduction into this case of the evidence before referred to, showing the widespread demand for, national use, and popularity of the patented improvements.

Mr. Richards who was a witness in this case and is a man of very large experience with corn planters, was asked whether he considered it "would be a very great matter for a mechanic" familiar with the art to produce the patented machine, and answered as follows:

"While it might not be a "very great matter" or invention, I still think it would be an invention, and if we are to estimate its greatness by its value, and its value by the way our friends seem to fight for it, I should say it was considerable of a matter." (X-Q. 27, p. 212.)

IS THE RE-ISSUE VALID?

This is the principal, if not the only question in the case.

Judge Baxter in his opinion says: "Among other testimony it [the defendant] has put in evidence a copy of the original letters patent, and insists that upon a comparison thereof with the re-issued letters it will appear that the latter is not for the same invention covered by the former," (p. 109) and concludes by saying: "The re-issue is not as we think, for the same invention covered by the original letters and is invalid." (P. 110.)

The original patent was dated August 10, 1880, and will be found in the record at page 374.

The application for the re-issue was filed May 15, 1882, though the petition therefor seems to have been filed April 28, and its verification dated April 10. This will be found at page 388. These dates are not important on a consideration of the question as put by Judge Baxter, which does not embrace the question of laches.

We understand that "all matters of fact connected with the surrender and re-issue are closed * * * by the decision of the commissioner in granting the re-issued patent*** and that "whether a re-issued patent is for the same invention as that imbodied in the original patent, or for a different one, is a question for the Court in an equity suit to be determined as a matter of construction, on a comparison of the two instruments." (Seymour vs. Osborne, 11 Wall. 545. Mahn vs. Harwood, 112 U. S. 354, 358.)

The presumptions of law are in favor of the validity of the re-issue, but all matters of construction between the two instruments are open.

The nature and extent of the invention is, in the first place, to be ascertained from the specification and drawings of the patent.

In this case the drawings of the re-issue are precisely the same as those of the original, and the only difference in the description consists in immaterial verbal changes. It cannot therefore, we think, be said, that the re-issue is not for the same invention as the original, if the thing claimed in the re-issue is shown and described in the original.

As we understand the law, a patentee has the right to claim by re-issue everything that was clearly shown and described as invention in the original patent, unless abandoned. (Parker and Whipple Co. *vs.* Yale Clock Co.; 123 U. S. 87, 99.)

The first three claims of the re-issue are all that are in controversy here, and to show that they are fully warranted by the statements of the invention in the original patent, we write them opposite those statements.

FROM THE ORIGINAL PATENT.

"My invention relates to an improvement in corn-planters of the class employing a main frame mounted on wheels, which main frame is combined with a runner frame in front, and so attached to the main frame that it may be either a rigid or yielding planter, and also employing cone-gears and driving-chains to actuate the dropping mechanism for planting, and adapted to be used either as a rigid or yielding planter.

"My improvement consists, first, in the arrangement of a lifting hand-lever mounted upon a shaft and connected to the foot-lever centrally pivoted to the main frame, the forward end of which lever is hinged to the runner-frame, and the several parts being so arranged that the runner-frame may be controlled by either the hand-lever or foot-lever, or both, at the will of the operator, the hand-lever being combined with detachable fastening devices, so as to be set in proper position to form a rigid planter, and so that the fastening devices can be dispensed with, and the hand and foot levers used to control the operation of the machine when used as a yielding planter.

CLAIMS OF THE RE ISSUE.

"1. In a corn-planter having the rear main frame mounted on supporting-wheels and the front runner frame hinged or pivoted to the main frame, the combination of a foot-treadle and a hand lever adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners, substantially as herein set forth.

"When it is desired to operate the machine as a yielding planter the locking device, d', is thrown out of connection with the segment-plate and secured by a hasp, d^3, the hand and foot levers then being free to vibrate with the runner-frame and under control of the operator. When the locking devices of the lifting-lever D are brought into operation the operator sets the runner-frame in any given position by means of lever D, the lock-lever holding it rigid, but under easy control of the hand; or the foot-lever may be used to assist in raising or lowering the frame, and the weight of the driver may be thrown upon the foot-lever to force the runners into the ground if necessary.

"In the accompanying drawings, Figure 1 is a side elevation, partly in section, of a corn-planter embodying the first features of my invention. Fig. 2 is a front elevation, partly in sections, of the same. Fig. 3 is a broken plan view, partly in section, showing the connection between the hand and foot levers."

"2. In a corn-planter having the rear main frame mounted on supporting-wheels and the front runner-frame hinged or pivoted to the main frame, a foot treadle for elevating or depressing the runner-frame, in combination with a hand lock-lever, the foot-treadle and hand-lever adapted to be used in conjunction for forcing and locking the runners into the ground or lifting and locking them out of the ground, substantially as herein set forth.

"3. In a corn-planter having the rear main frame mounted on supporting-wheels and the front runner-frame hinged or pivoted to the main frame, a foot-treadle for elevating or depressing the runner-frame, in combination with a hand-lever rigidly connected therewith, that either hand-lever or treadle may be used for forcing the runners into the ground or lifting them out of the ground, substantially as herein set forth."

These claims of the re-issue are expressed in so nearly the exact language of the statement of invention in the original, that we can not see any room for arguing that the "re-issue is not for the same invention as the original patent."

Judge Withey, in his opinion deciding the motion for injunction, said:

"The decree rendered in this Court at the last term by the Circuit and District Judges in favor of the complainant and against The Wait Manufacturing Co., sustained *prima facie* the novelty of the invention, and the validity of the re-issue. I now entertain no doubt as to its validity. It covers no more than is found in the original patent, in my judgment, considering both the description and the claims contained therein, and which, when fairly viewed, were sufficient to justify the amendment and re-issue." (Rec. 46.)

And again, in his dissenting opinion, says:

"Comparison between the original and re-issue patents, the description, specifications and drawings in both being the same, makes it apparent, in my judgment, that there has been no broadening of the claim in the latter beyond the invention." (Rec. 113.)

EXPANSION OF THE CLAIM BY RE-ISSUE.

To us it is so clear that the re-issue is for the same invention as the original, that we fear we have misunderstood Judge Baxter, and that by the expression "covered by the original" he means claimed by the original. This receives weight from the fact that he discusses the questions of infringement and expansion of the first claim of the original.

We understand that when an invention is new and useful, and fully shown in an original patent, the inventor could always secure the *invention* by a re-issue,

and that the only change, if any, that the decisions of this Court, (Hales *vs.* Van Wormer, Miller *vs.* Brass Co., and subsequent cases,) have made, is that the application for the re-issue must have been filed within a reasonable time and before the rights of others had intervened.

In Odell *vs.* Stout, 22 Fed. Rep. 161, heard before Mr. Justice Matthews and Judge Sage, the Court say:

"It is to be kept in mind, however, that enlarging the claim may be an entirely different thing from broadening the invention. He may, under proper circumstances, so enlarge his claim as to make it extend to the limits of his invention, but he is bound by those limits."

In that case the Court approvingly quotes from Wheeler vs. Clipper Mower & Reaper Co. 10 Blatch. 181, the following language of Judge Woodruff:

"I know of no rule which forbids the inventor, who has omitted to claim separate new devices or several distinct combinations in the original patent, making a surrender and taking re-issues for the distinct combination or separate devices.*** If the devices covered by the re-issue were, in fact, new and useful, and if they are shown in the original specification, drawings, or model, then the patentee is entitled to secure the exclusive use of each separately by a re-issue embracing each."

And after explaining Miller vs. Brass Co. and James vs. Campbell, approvingly quote the following language of Mr. Justice Blatchford, in Wooster vs. Handy, 21 Fed. Rep. 51.

"The rule laid down by the Supreme Court is that where it is sought merely to enlarge a claim there must

be a clear mistake and inadvertence, and a speedy application for the correction, with no unreasonable delay; that in such a case a patentee cannot wait until other inventors have produced new forms of improvement and then apply for such an enlargement of his claim as to make it embrace those new forms; and that when it is apparent from a comparison of the two patents that the re-issue is made to enlarge the scope of the patent, the Court may decide whether the delay was unreasonable, and the re-issue therefore void. This view has been repeatedly asserted and applied by the Supreme Court in numerous cases decided since those in 104 U.S."

And then say that "upon the authority of these cases, it is clear that the claim of a patent may be enlarged by a re-issue if the patentee move promptly and no rights of others have intervened."

This we understand to be in harmony with the rule laid down by this Court in Mahn vs. Harwood, 112 U. S. 354, Coon vs. Wilson, 113 U. S. 268, and subsequent cases.

It seems to us that Judge Baxter was wrong, even if he meant to be understood as saying that the invention claimed in the re-issue was not the same as that *claimed* in the original patent, for as we understand the rule, a patentee may, under the circumstances mentioned, by re-issue, claim his invention within the description of it in the original, and Judge Baxter nowhere in his opinion intimates that the invention claimed in the re-issue was not fully described and shown in the original.

The above relates to the rule in cases in which the claim of the re-issue has been broadened beyond that of

the original, but within the limits of the invention as originally shown.

There is as we understand another class of cases, justifying a re-issue, and that is where the claim of the original is ambiguous, or where under a critical construction it might be held not to cover the described invention.

The first claim of the original patent was open to one or both of these objections. It was as follows:

1. "In a corn-planter having the rear main frame mounted on supporting-wheels, the front runner-frame hinged or pivoted to the main frame and operated by an elevating and depressing lever pivoted to the main frame, having its front end slotted and connected to the runner-frame by a bolt passing through said slot, in combination with the shaft d and the lifting hand-lever D, rigidly attached to said shaft, for elevating, depressing and controlling the runner-frame, substantially as herein set forth."

Now, this is a peculiarly worded claim, and just what it might be construed to mean is difficult to say. Certain it is, however, that it does not expressly claim the combination of the hand-lever and foot-treadle; and whether it would be construed to cover these two elements, with their functions as described in the specification, is hardly, we think, necessary to consider, for had the inventor waited for a decision of this question, it would then have been too late to amend.

It will also be observed that the claim omits all mention of the lock-lever arrangement, whereby one of the functions of the invention is accomplished as described.

We therefore think that the patentee not only had a right to amend his claim, but that it was his duty to do so before any right intervened, so that the public might know what was secured to him without the aid of a Court to construe the claim.

Any question of novelty or infringement would seem foreign to the one under consideration, but Judge Baxter's treatment of the subject is so peculiarly his own that to follow him it seems necessary to refer to both. He says:

"The foregoing first claim of the original patent ought, in view as well of its own terms as of the correspondence relating thereto which passed between the office and the inventor's solicitors, shown by the file wrapper, to be restricted to the specific combination therein described. This was all to which the inventor was entitled, everything else having been anticipated by others. Thus construed, the defendant's planter is not an infringement of the original patent. This was conceded by the complainant's expert in his testimony, and by counsel in the argument of the cause; but defendant's planter is, as they contend, and as the Court concedes, an infringement of the re-issued patent."

We will consider the different questions presented by the above quotation separately; and, first, Judge Baxter says, "the first claim of the original patent, in view of its own terms, ought to be restricted to the specific combination therein described."

Now, we have said that this claim might be considered to be ambiguous, and the trouble about it was that it was *not specific*, and there is nothing in it in any way tending to show, as we think, an intention to restrict or limit it for less than was described to be the

invention; and a little further on we will endeavor to show not only that it is substantially the same as a claim of the re-issue, but that it would be infringed by the defendant's machine.

Second, Judge Baxter says, "That said first claim, in view of his correspondence with the Patent Office relating thereto, as shown by the file wrapper, ought to be restricted to the specific combination therein described."

We have examined the contents of the file wrapper which are printed at page 304, and find that this first claim was made in the original application, but we fail to find any mention of it in any subsequent correspondence, and therefore can not understand what Judge Baxter means by the expression.

True it is that other claims were rejected by the examiner; but, *prima facie*, these were not the same as those of the re-issue; but, if they are, the presumption is that they were improperly refused on the original application, and are proper in the re-issue. (Lockwood *vs.* Morey, 8 Wall. 230; Eames *vs.* Andrews, 122 U. S. 40, 63.

Third, Judge Baxter says that the first claim of the original, when restricted to the specific combination, "was all to which the inventor was entitled, everything else having been anticipated by others."

It seems to us that this is not a proper subject for consideration. When it appears upon a comparison of the original and re-issue patents that the claim of the latter is proper, then the question of novelty should be

considered with reference to the re-issue. This will be discussed further on, under the head of novelty, and we pass it here with a reference to the opinion of Judge Withey, where the question is very fully discussed, and the conclusion arrived at that "everything else" had not been anticipated, and that the re-issue claims no more than was new and useful.

(Judge Withey's opinion will be found at page 24 of this brief.)

Fourth, Judge Baxter says that said claim of the original patent, when "thus construed", — that is, strictly,—it is not infringed by the defendant's machine, and that it was so conceded by complainant's expert and counsel.

It does not seem to us that the question of infringement of the original claim was involved, but if it was, we know of no reason why the oft repeated rule, so well stated by the late Mr. Justice Swayne as follows should not have been applied by Judge Baxter:

"A patent should be construed in a liberal spirit, to sustain the just claims of the inventor. This principle is not to be carried so far as to exclude what is in it, or to interpolate any thing which it does not contain. But liberality, rather than strictness, should prevail where the fate of the patent is involved, and the question to be decided is whether the inventor shall hold or lose the fruits of his genius and labors." Rubber Co. vs. Goodyear, 9 Wall. 788, 795.

If the uncertainty or ambiguity of the claim be removed by holding it to cover all the elements named in it, and then the rule of liberal construction be ap-

plied, in our opinion, it would most unquestionably be infringed by the defendant's planter.

Judge Baxter evidently, between the date of the hearing and the writing of his opinion, forgot the contention of counsel for complainant in this regard, as he did the evidence of complainant's expert. Counsel for complainant both on the motion for the preliminary injunction and at the final hearing, contented that the defendant's device would infringe said original claim. As to this, Judge Withey says:

"I did not understand it to have been admitted by complainant's counsel that the defendant's planter would not be an infringement of the original patent, and complainant's expert in his testimony on his cross-examination, in answer to question 64, page 18 [Rec. 188] complainant's record, does not, as I understand it, concede it. He is shown the original of the re-issued letters and asked, 'whether you find any claim in said original which would be infringed by Exibit Challenge Rotary Drop,' which is the defendant's planter. He answered this, 'would depend upon the construction which a court might give to the words in that claim,' as follows: 'Having its front end slotted and connected to the runner-frame by a bolt passing through said slot. My own construction of it would be such, that I would consider it an infringement.' The complainant examined but the one expert, and it would therefore appear to be a mistake to say that complainant's expert in his testimony conceded that the defendant's planter does not infringe the original patent."

The expert Mr. Richards, is a man whose large experience eminently qualifies him to aid the Court in a consideration of the mechanical questions involved in this case, and while he very properly declined to as-

sume the functions of a Court in construing the claim, he gave his unqualified opinion that as he understood the claim it would be infringed.

There is not an element or part named in said first claim, that is not found in the defendant's machine. It may be contented that the defendant's foot treadle is not *slotted* at its front end, but whether it is or not, depends on what is meant by a slot. Webster says it is any aperture in a plate for the reception of another part.

The defendants treadle certainly has an aperture through which a bolt passes, as specified in the claim. This slot is not elongated to the extent shown in the drawings of the patent, but to compensate for this the brackets, to which its front end is attached, are pivoted to the front frame. These brackets might be called links, but, by whatever name called, the operation and result are precisely the same as that of the patent, as we think, and as testified to by Mr. Richards, on cross-examination ques. 47, p. 135, where he was asked whether he considered the two methods equivalant, and answered that he did.

The only other formal difference is found in the hook connection between the two levers in defendant's machine, which Mr. Richards thinks is the full equivalent of the connection of the patent, and which defendant's expert did not attempt to deny, but it is not necessary to discuss this, as both judges of the Court below admit that notwithstanding this difference the defendant's machine infringes the reissue, which is more restricted in terms in this respect than the original.

Fifth, we think a comparison of the third claim of the reissue with said claim of the original patent will show that there is no substantial difference between them; but, in view of what we have shown, we do not think it necessary or important to argue the question.

LACHES.

The question is raised by the pleadings and was argued in the Court below whether the inventor lost his right to secure his invention through delay in applying for the reissue. This question is not alluded to by Judge Baxter.

We understand the rule of decision relating to reissues to be, that when the reissue is applied for within two years from the date of the original patent, the delay is not considered unreasonable and need not be accounted for, and does not of itself render the reissue invalid or voidable. Mahn vs. Harwood, 112 U. S. 354, 363. Wollensak vs. Reiher, 115 U. S. 96, 101.

If we are right in our understanding of the rule of law applicable to this case, it is only necessary to compare the date of the application for the re-issue with that of the original, to see that it does not come within the rule. The original patent was dated August 10, 1880, and the complete application for the re-issue was filed May 15, 1882, as appears by the re-issue, but the "File Wrapper" shows that the petition and other papers were filed April 28, 1882. (Rec. 387.)

Taking May 15 as the date of filing there had intervented from the date of the original, one year, nine months and five days.

The evidence shows that the defendant was created and commenced its manufacture after the date of the re-issue, and that no "rights which would be recognized in favor of others have intervened."

JUDGE BAXTER'S OPINION.

"This is a bill to enjoin an alleged infringement of re-issued letters patent No. 10,155, issued to the complainant, as assignee of Michael Runstetler, on July 11th, 1882.

"We have not the time to enter upon a full discussion of the facts in the case, and hence will content ourselves with a simple announcement of the conclusion to which we have arrived on the question made and relied on by the defendant.

"In a former suit prosecuted by the complainant in this court against the Waite Manufacturing Company for an alleged infringement of the same re-issued letters, we rendered a decree in complainant's favor, affirming their validity, and ordered an account of the damages. This, of course, would be conclusive of this case on that point, if the facts of the two cases were the same, but the defendant did not introduce in the former case any testimony in support of its defense. The decree made therein was predicated upon the *prima facie* case made by the production of complainant's said re-issued letters and proof of the alleged infringement, but here the defendant comes with full proof. Among other testimony it has put in evidence a copy of the original letters patent, and insists that upon a comparison thereof with the re-issued letters it will appear that the latter is not for the same invention covered by the former.

"The first claim of the original patent is in these words: 'In a corn-planter having the rear main frame mounted on supporting wheels, the front runner frame hinged or pivoted to the main frame

and operated by an elevating and depressing lever pivoted to the main frame, having its front end slotted and connected to the runner frame by a bolt passing through said slot, in combination with the shaft A and lifting hand lever D, rigidly attached to said shaft for elevating, depressing, and controlling the runner frame, substantially as herein set forth.'

"A re-issue was applied for and obtained, in which the foregoing claim was expanded into the four following claims:

"'1. In a corn-planter having the rear main frame mounted on supporting wheels, and the front runner frame hinged or pivoted to the main frame, the combination of a foot treadle and a hand lever adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners, substantially as herein set forth.

"'2. In a corn-planter having the rear main frame mounted on supporting wheels, and the front runner frame hinged or pivoted to the main frame, a foot treadle for elevating or depressing the runner frame, in combination with a hand lock lever, the foot treadle and hand lever adapted to be used in conjunction for forcing and locking the runners into the ground or lifting and locking them out of the ground, substantially as herein set forth.

"'3. In a corn-planter having the rear main frame mounted on supporting wheels, and the front runner frame hinged or pivoted to the main frame, a foot treadle for elevating or depressing the runner frame, in combination with a hand lever rigidly connected therewith, that either hand lever or treadle may be used for forcing the runners into the ground or lifting them out of the ground, substantially as herein set forth.

"'4. The combination, in a corn-planter having the rear main frame monnted on supporting wheels and a front runner frame hinged or pivoted to the main frame, of a foot-treadle for elevating the runner frame and a hand lever for elevating or depressing the same, both arranged to move simultaneously when either is acted upon by an operator.'

"The foregoing first claim of the original patent ought, in view as well of its own terms as of the correspondence relating thereto, which passed between the office and the inventor's solicitors, shown by the file wrapper, to be restricted to the specific

combination therein described. This was all to which the inventor was entitled, everything else having been anticipated by others. Thus construed, the defendant's planter is not an infringement of the original patent. This was conceded by complainant's expert in his testimony, and by counsel in the argument of the cause; but defendant's planter is, as they contend, and as the court concedes, an infringement of the re-issued patent. The re-issue is not, as we think, for the same invention covered by the original letters and *are* invalid.

"Complainant's blll will be dismissed with costs.

"BAXTER, *Judge, etc.*

"Filed Jan. 12, 1885."

JUDGE WITHEY'S DISSENTING OPINION.

"I am not able to concur in the opinion of the circuit judge filed in this case, and briefly state my reasons:

"The suit is for the infringement of certain claims of re-issued letters patent 10,155, granted to complainant as assignee of Michael Runstetler, the inventor. The invention, as stated in complainant's brief, consists of a combination of hand and foot levers, arranged in conection with the frames of a corn planter for regulating and controlling the operations of the machine. While hand and foot levers are old and have long been used on many kinds of machines separately and combined, and are shown in many patents of earlier date than complainant's, it is believed the patented improvement in corn-planters of the specific combination and devices shown and described in the original patent, 231,104, as a means for controlling the machine were, at the time Runstetler invented said improvements, new and useful, not known or used by others, and that in the re-issued letters there is no broadening of the invention, but a warrantable enlargement of the claim made in the original patent.

"Inasmuch as the opinion of the circuit judge is that the defendant's planter would infringe the re-issued letters, if the re-issue was valid, I shall, as I concur in that view, attempt to show that the re-issue patent is valid.

"After stating that the decision rests upon one question made and relied on by the defendant, viz., that upon comparison of the original patent with the re-issued letters it will appear that the latter are not for the same invention covered by the former, the opinion states the claim in question in the original patent and the four claims of the re-issued letters which the bill alleges the defendant has infringed, and then concisely gives the grounds of the decision as follows:

"'The foregoing first claim of the original patent ought, in view as well of its own terms as of the correspondence relating thereto, which passed between the office and the inventor's solicitors, shown by the file wrapper to be restricted to the specific combination therein described. This was all to which the inventor was entitled, everything else having been anticipated by others. Thus construed, the defendant's planter is not an infringement of the original patent. This was conceded by complainants expert in his testimony and by counsel in the argument of the cause. But defendant's planter is, as they contend and as the court concedes, an infringement of the re-issued patent. The re-issue is not, as we think, for the same invention covered by the original letters and *are* invalid.'

"It may be said at the outset that the case does not seem to involve consideration of whether the defendant's machine is an infringement of the original patent. The re-issued letters were granted and the original patent surrendered for the reason *prima facie* that by inadvertence or mistake the inventor had omitted to claim some material element of the improvement shown in the original patent which he might have claimed. Hence, if the defendant's planter would not be an infringement of the original patent it does not follow that such machine does not infringe the re-issued letters. Again, I did not understand it to have been admitted by complainant's counsel that the defendant's planter would not be an infringement of the original patent, and complainant's expert in his testimony on his cross-examination, in answer to question 64, page 18, complainant's record, does not, as I understand it, concede it. He is shown the original of the re-issued letters and asked 'whether you find any claim in said original which would be infringed by exhibit Challenge Rotary

Drop,' which is the defendant's planter. He answered this 'would depend upon the construction which a court might give to the words in that claim, as follows: Having its front end slotted and connected to the runner frame by a bolt passing through said slot. My own construction of it would be such that I would consider it an infringement.'

"The complainant examined but the one expert, and it would therefore appear to be a mistake to say that complainant's expert in his testimony conceded that the defendant's planter does not infringe the original patent.

"I call attention to the invention shown and described in the original patent, and to the claim therein bearing upon the reissue, with a view to showing that the improvement was not restricted to the specific combination of said first claim of the original patent, and that such combination therein claimed was not all that the inventor was entitled to claim. I shall further on call attention to some considerations why everything else had not been anticipated by others and why the re-issue is not invalid.

"The original patent describes the invention as follows:

"'My invention relates to an improvement in corn-planters of the class employing a main frame mounted on wheels, which main frame is combined with a runner frame in front and so attached to the main frame that it may be either a rigid or yielding planter,' etc.

"'My improvement consists, first, in the arrangement of a lifting hand lever mounted upon a shaft and connected to a foot lever centrally pivoted to the main frame, the forward end of which lever is hinged to the runner frame, and the several parts being so arranged that the runner frame may be controlled by either the hand lever or foot lever, or both, at the will of the operator, the hand lever being combined with detachable fastening devices so as to be set in proper position to form a rigid planter, and so that the fastening devices can be dispensed with and the hand and foot levers used to control the operation of the machine when used as a yielding planter.

"'In the accompanying drawings Fig. 3 is a broken plan view, partly in section, showing the connection between the hand and foot levers.' etc.

"'When the locking devices of the lifting lever D are brought into operation the operator sets the runner frame in any given position by means of the lever D, the lock lever holding it rigid, but under easy control of the hand, or the foot lever may be used to assist in raising or lowering the frame, and the weight of the driver be thrown upon tho foot lever to force the runner into the ground if necessary.'

"In view of the invention as thus described and shown by the specifications and illustrated by the drawings are the claims in the re-issued letters extended beyond the limits of the invention?

"In the original patent the claim is as follows: 'I claim—1. *In a corn planter having the rear main frame mounted on supporting wheels, the front runner frame hinged or pivoted to the main frame* and operated by an elevating and depressing lever pivoted to the main frame, having its front end slotted and connected to the runner frame by a bolt passing through said slot, in combination with the shaft *d* and the lifting hand lever D, rigidly attached to said shaft for elevating, depressing, and controlling the runner frame, substantially as herein set forth.'

"It will be noticed that this claim omits the combination of a foot treadle and a hand lever 'so arranged that the runner frame may be controlled by either or both at the will of the operator,' and the lock lever arrangement by which the front and rear frames of the planter are locked together in such a way as to hold the runners firmly in or out of the ground when desired or required to form a rigid planter.

"The combinations which are claimed as new and useful in the re-issued letters and described and shown in the original patent consist, among other things, of facilities for operating a corn-planter in the manner described readily and without delay and so that the whole weight of the driver can be instantly thrown onto the runners to depress them into the ground by the use of the hands and feet and locking them there. Of course, hand levers and foot levers are not new, and they have been employed in machinery to be operatod separately and combined, but the changes made by Runstetler give those practical results which enable a corn-planter to be operated in a practical way never before attained, and therefore in a new and useful manner.

The re-issued letters enlarge the claim to embrace such new and useful results—nothing more than the patentee was entitled to claim in the original letters. The third claim in the re-issued letters, of a rigid connection of hand and foot levers, has novelty only as adding an additional feature to the combination specified in the first claim.

"The three claims in question in the re-issue are as follows. I omit the words in the original claim that are in italic, but which are contained at the beginning of each of the following:

"'I claim—

"'1. * * * The combination of a foot treadle and a hand lever, adapted to be used in conjunction or independently, for the purpose of elevating or depressing the runners, substantially as herein set forth.

"'2 * * * A foot treadle for elevating or depressing the runner frame in combination with a hand lock lever, the foot treadle and hand lever adapted to be used in conjunction for forcing and locking the runners into the ground or lifting and locking them out of the ground, substantially as herein set forth.

"'3. * * * A foot treadle for elevating or depressing the runner frame, in combination with a hand lever rigidly connected therewith, that either hand lever or treadle may be used for forcing the runners into the ground or lifting them out of the ground, substantially as herein set forth.'

"It will be remembered that it is held by the circuit judge that the defendant's planter infringes the complainant's re-issued letters, and there can be no doubt of this if the re-issue is valid.

"Comparison between the original and re-issued patents, the description, specifications and drawings in both being the same, makes it apparent, in my judgment, that there has been no broadening of the claim in the latter beyond the invention.

"If the devices sought to be covered by a re-issue are in fact new and useful, and if they are shown in the original specifications and drawings or model, then the patentee is entitled to secure their exclusive use by a re-issue. (Wheeler *vs.* Reaper Co., 10 Blatchf., 181. This rule is recoguized by Justice Matthews and Judge Sage in Odell *vs.* Stout, 22 Fed. Rep., 161.)

"The inventor is required by the statute to particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery, but the statute also provides that whenever a patent is inoperative or invalid by reason of a defective or insufficient specification, and the error arises by inadvertence, accident, or mistake, 'a new patent for the same invention' may be issued on surrender of the original letters patent. The 'specifications' include the statements, descriptions, drawings, and models, and claim of the original patent, hence the courts hold that the inventor is entitled in his re-issued letters to so 'enlarge his claim as to make it extend to the limits of his invention,' as shown and described in the original patent, and that 'enlarging the claim may be an entirely different thing from broadening the invention.' (Odell *vs.* Stout, *supra.*)

"There was no showing in this case as to what proof was before the Patent Office on the application for re-issued letters except a certified copy of the file wrapper. Whether evidence was presented beyond what is therein shown does not appear. *Prima facie* the re-issue was granted upon adequate showing of inadvertance or mistake in omitting to claim the full invention described and shown in the original patent. In my opinion, it appears from what I have presented of the two patents that the invention is not broadened in the re-issue, but it is simply an enlargement in the first three claims to cover his improvements.

"The opinion of the circuit judge, as before stated, is that the claim in the original patent ought to be restricted to the specific combination therein described, everything else having been anticipated. I have attempted to show that upon the face of the patent the claim ought not to be thus restricted, and now I will briefly consider whether the invention was anticipated by others. *Prima facie* no part of the invention shown and described in the original patent was anticipated, or the re-issued letters would not have been granted with its broadened or enlarged claim.

"A large number of corn-planters and machines were put in evidence and exhibited at the hearing to show the improvements in corn-planters and the devices employed for operating them more successfully by means of combined hand levers and foot treadles, and so as to give the best practical results to the farmer.

The 'Evans corn drill and planter' was the only one that even tended to show that the invention of Runstetler had been anticipated by any person; therefore I confine myself to the evidence touching that planter.

"Runstetler's invention was in November, 1879. Austin C. Evans testified, in substance, that in the spring of 1878, at Springfield, O., he made, with the assistance of others, in the shop of the Evans Manufacturing Co., a corn-planter provided with hand and foot levers. He was unable to produce the machine, but says, 'I can produce one similarly constructed,' which is the exhibit—Evans corn drill and planter—before referred to. Asked how he was able to fix the date of making the corn-planter similar to exhibit, his reply is, 'My memory and dates that I have.' But no memorandum or other evidence of the date than memory is shown to exist to which the witness has had access. His testimony further is that the machine he made was never patented and no patent applied for. It was a single machine, without a duplicate, never used but once, when a farmer borrowed it to plant corn. When it was returned to the shop the machine was laid aside, where it remained unnoticed until the spring of 1882 and then burned with the shop in which it was.

"Evans was engaged with his firm in building corn-planters in 1878 and the following years up to 1883, but a different planter was adopted and manufactured. Evans went into the field where the particular machine was being operated by the farmer, Haley, who borrowed it, and there observed how it performed, and may be supposed to have become satisfied whether it was a practical, useful machine. The conclusion he arrived at is sufficiently evidenced by the fact that it was put aside and abandoned—entirely discarded.

"Perhaps the preponderance of evidence is that the machine was manufactured in the spring of 1878 and used by the farmer that season to plant two fields of corn; but it is, nevertheless, true that there is no evidence of the date other than the uncertain and treacherous recollection of witnesses, and there is some evidence tending to show a later date; but if it is conceded to have been manufactured in 1878 did it embrace such devices and combinations of hand lever and foot treadle as to anticipate the complain-

ant's invention? I have said the machine was burned; it could not be produced in evidence; but one piece of wrought iron, called a latch, was rescued from a pile of scraps, and this latch was slightly changed and fitted to another machine made by the Evans Manufacturing Co., which machine thus manipulated is the 'Evans corn drill and planter' exhibited to represent the burned machine. Witnesses testify that this exhibit is constructed similarly to the original planter burned in 1882. Evans says his firm manufactured 25 machines for use in 1878 similar to the corn-planter that was burned. He says, 'there was no difference' between them and his first machine, made in the spring of 1878, 'except that the others did not have a hand lever.'

"The evidence amounts to this: The Evans Manufacturing Co. made 25 corn-planters in 1878, one of which was fitted with hand and foot levers. The one having such attachments was loaned to a farmer to plant two fields of corn, Evans going to see its practical working in the field. It was returned to the shop and put away, where it remained for years, the company going on with the manufacture of corn-planters like Exhibit 'Evans Planter,' without the combined hand and foot levers. Now, it is manifest that the alleged anticipating corn-planter was without practical value, as shown by the defendant's witnesses. If Evans' testimony does not suffice to make out the defence there is none in the case. The truth is the combination in the 'Evans corn drill and planter,' as fixed up to represent the anticipating machine itself, required so much skill to operate the system of levers as to be practically worthless, and ought not to be allowed to destroy the claim of a *bona fide* inventor. There may be and are points of analogy, probably, but the difference between the Evans corn drill and planter, made in the spring of 1878, as he claims, and the Runstetler invention, owned by complainant, is the difference between failure and success. This is shown by the fact that complainant's invention has been adopted by many other manufacturers and has superseded in the market the older forms of corn-planters. The defendant has adopted the invention in its infringing machines simply because complainant's invention is practical and useful. The utility of complainant's invention is shown by its results, if there was otherwise doubt from the evidence, yet when utility is

shown to exist in any degree courts presume the invention sufficient to support the patent. Smith *vs.* Goodyear Dental Co., 93 U. S., 495.

"Judge Blodgett, in Brown Manufacturing Co. *vs.* Deere, 21 Fed Rep. 712, says: 'The fact that not only the defendant in this case, but other large manufacturers of cultivators, have at once adopted substantially the same auxiliary lifting devices shown in the complainant's patent is evidence of the absolute acceptance of this as a practical solution of many of the difficulties which had been encountered in the attempt to use the older device, and is such a change and improvement as required more than mechanical skill, and brings this device fairly within the domain of the patent law.'

"Here, in the case at bar, is an old piece of wrought iron fitted to an old corn-planter, and the testimony of witnesses from memory, going back six years, as to the identity of such corn-planter, in its system and combination of levers and their mode of operation, offered to defeat a practical invention. A reliable and valuable device should not be lost to its owner in that way. The defendant's evidence lies too much in the 'hazy and treacherous memory of those who long ago saw a machine, and now, looking upon one to represent that, when asked if the one is substantially the other, answer 'yes.''

"Believing, for the reasons stated, that the Evans machine did not anticipate the complainant's invention, and that the latter is both new and useful and is invention, and that the re-issue claims no more than the invention shown and described in the original patent, the complainant is, in my opinion, entitled to a decree perpetually enjoining the defendant from manufacturing the infringing machine and for an accounting.

"S. L. WITHEY,

"Filed Feb. 7, 1885. "*District Judge.*'

The foregoing, we think, presents all the questions which it will be necessary to consider, but as the pleadings make an issue on the questions of invention, novelty and infringement, and as the testimony relating to the prior state of the art is quite contradictory, we will follow this with substantially a reprint of our brief in the Court below.

INFRINGEMENT.

The bill charges infringement of the first four claims of the re-issue, and the provisional injunction relates to all four, but as the fourth claim is broader than is necessary to cover the defendant's machine, counsel for complainant in their opening testimony stated that no relief would be asked under it.

On a motion for a preliminary injunction, the defendant is entitled to the benefit of every doubt. We might, therefore, let the question of infringement rest on the decision of his honor, the district judge, in granting the provisional injunction, wherein he says: "It is true, in my opinion, *beyond a question*, that the defendant's corn planter infringes the improvements covered by the first four claims."

But since the delivery of this opinion we have examined Mr. W. B. Richards, of Galesburg, Ill., a gentleman whose large experience in this art eminently qualifies him to aid the court in the determination of this question, if any aid be considered necessary after a comparison of the defendant's planter, with that shown and claimed in the re-issue, and, therefore, for convenience of the court, we print his testimony here.

Claim 1 is as follows:

FIRST CLAIM.

"1. In a corn planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, the combination of a foot-treadle and hand-lever adapted to be used in conjunction or independently, for the purpose of elevating or depressing the runners, substantially as herein set forth."

"6 *Q.* Please institute a comparison between the improvement specified in the first claim of said re-issue and the defendant's said planter, and state how they agree or differ, and give your reasons for any opinion you may express.

"*A.* In order that the comparison which I may make between the invention recited and claimed in the first claim of the re-issue 10,155, and the exhibit Challenge Rotary Drop, may not be misunderstood, I will first state what I consider the invention to be, which is recited and claimed in said first claim of the re-issue.

"As stated in the claim, the invention therein recited has reference to a combination of parts to be used in a corn planter of that class, in which a rear main frame, mounted on supporting wheels, is hinged to a front runner frame. The combination recited in the claim is a foot treadle, which may be used and operated by the feet of the operator, for the purpose of elevating the runners, and also for the purpose of depressing the runners to force them into the ground, and a hand-lever adapted also to raise or elevate the runners when desired, and further adapted to force them into the ground or depress them. The adaptation of these parts further being such that the operator may use the hand-lever and foot-lever in conjunction, and thereby use the force derived from both his hands and feet, both to force the runners into the ground when desired, and to elevate them when desired or required, or when less force is required the operator may both elevate and depress the runners with his feet alone, acting on the foot-lever, or with the hand-lever alone, moving it by means of his hands. As shown and described in said re-issue, the hand and foot-levers are made to act in 'conjunction,' as recited in this first claim, by means of being connected with each other, and having one and the same connection to the forward frame.

"In the exhibit, 'Complainant's Exhibit Challenge Rotary Drop,' I find the same class of corn planter shown and described as in this re-issue patent, and recited in the first claim thereof. I also find both a hand-lever and a foot-lever connected with each other, and connected by one and the same connection to the forward frame, and adapted to act together in such manner that the

operator may use the foot-lever to raise and elevate, and also to depress the runners, and may use the hand-lever for the same purpose; and when desired or necessary, may use both of said levers in conjunction to both raise and depress the runners of the planter. In fact, I find in this exhibit every element or part recited in the first claim of the re-issue patent 10,155, and the elements or parts of the exhibit are combined in such manner that each element or part performs the same function as recited in the first claim of this re-issue, and the elements or parts of the exhibit in combination also perform the same function, in substantially the same manner as they do in combination, as recited in said first claim."

Claim 2 is as follows:

SECOND CLAIM.

"2. In a corn planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, a foot-treadle for elevating or depressing the runner frame, in combination with a hand lock-lever, the foot-treadle and hand-lever adapted to be used in conjunction for forcing and locking the runners into the ground or lifting and locking them out of the ground, substantially as herein set forth."

"7 *Q.* Please make a similar comparison between the invention recited and claimed in the second claim of said re-issue, and said exhibit, 'Complainant's Exhibit Challenge Rotary Drop.'

"*A.* For reasons given in the first paragraph in last answer, I will state what I consider to be the subject matter of the second claim of the re-issue 10,155. Briefly stated, the second claim is for a combination of the same parts as the first claim, with the introduction of the further feature or part in the second claim of a lock by means of which the hand-lever may be locked to the main frame of the planter, and thereby held in such manner as to hold both the hand-lever and the foot-lever, and thereby lock the front and the rear frames of the planter to each other, and prevent any vertical flexure between them, so that the additional function may arise of holding the runners firmly in the ground when desired or required, and of lifting and locking the runners out of the ground when desired or required.

"In the exhibit referred to in the question, a lock is used in connection with the hand-lever, which is the same kind of a lock, operates in the same manner, and performs the same functions in combination with the foot and hand-levers, and the other parts of the planter, as does the lock recited in the second claim of the re-issue 10,155. Hence, I find in the exhibit all the elements recited in the first claim of this re-issue, and further also recited in the second claim thereof, and also find the additional elements recited in the second claim of the re issue; and further find each and all the elements, including the additional element of the lock, adapted to perform the same functions, severally and in combination in the exhibit, as recited in the second claim of the re-issue."

Claim 3 is as follows:

THIRD CLAIM.

"3. In a corn planter having the rear main frame mounted on supporting wheels, and the front runner frame hinged or pivoted to the main frame, a foot treadle for elevating or depressing the runner frame, in combination with a hand-lever rigidly connected therewith, that either hand-lever or treadle may be used for forcing the runners into the ground or lifting them out of the ground, substantially as herein set forth."

"8 *Q.* Please make a comparison between the invention specified in the third claim of said re-issue, and said exhibit, 'Complainant's Exhibit Challenge Rotary Drop,' and state the points of resemblance or difference which you find, giving your reasons for such opinion as you may express.

"*A.* For the reasons stated in the first part of my answer to question 6, I will state what I consider to be the subject matter of the third claim of the re-issue 10,155. The same elements are recited in this third claim as recited in the first claim, the elements or parts recited in the third claim perform the same functions separately and in combination as performed by the same elements or parts separately and in combination in the first claim. In the third claim a special feature is recited, which is not found in the first claim, that is, that the hand and foot-levers are rigidly connected with each other."

"In the exhibit referred to in the question, I find all of these elements arranged to operate separately and in combination in the same manner and for the same purpose as in the third claim of the re-issue 10,155. I further find in the exhibit the means for connecting the hand and foot-levers rigidly to each other when in operation, in such manner as to cause them to act together in precisely the same manner as they are caused to act together by their rigid connection recited in this third claim. This difference in the manner or method of producing rigidity between the hand and foot levers in the exhibit, from the manner of producing rigidity between them, as shown and described in the re-issue, does not affect their operations or functions in the least, in so far as they are recited in the third claim, and as no specific method is recited in the claim for producing the rigid connection between the hand and foot-lever, I do not construe the claim as limited, in the least, to any specific method or means of producing that rigid connection between said levers, hence I find the same combination of levers with the same special rigid connection in the exhibit, as recited and claimed in this third claim, having the same functions arising from the rigid connection of the levers in the exhibit, as in said claim."

There is no difference in principal of construction, in operation, or in the results produced between the complainant's and defendant's machines. The change is made solely to produce a formal diversity or useless change. (Roots *vs.* Hyndman, 6 Fish., 445.)

The defendant also examined an expert, but he was not asked to compare the defendant's planter with that specified in either of said three claims, and this omission we take to be an admission that no substantial difference could be shown.

In saying this we do not overlook the fact that in question 6, (p. 330), Mr. Powers is asked, *whether, in view of the state of the art*, he finds in the defendant's machine the improvements described in the first three claims of the re-issue.

It is not necessary to cite authority to show that the construction of a claim is solely for the court and not for a witness—not even for a jury; but if question 6 means anything, it is that the witness is to construe the claims, and then say whether he

finds them infringed,—another question which is purely for the court. However, the *expert* was asked to give his reasons for such opinion as he might express, and, as it has frequently been decided, it is the reasons and not the conclusions of an expert that are of value to a court, the respect due to Mr. Powers' opinions may be determined by this answer, in which he says: "The Challenge machine also has its hand-lever placed at one side of the seat, similar to the Wright machine of 1876, *and in this respect is dissimilar to complainant's machine.*"

This answer shows the utter ignorance of the witness as to the invention in controversy, about which he is offered to the court as an *expert* aid.

The only further criticism of the opinions of this *expert*, for the defendant, is that *any person* blessed with sight, looking at figures 2 and 3 of the drawings of the re-issue, can readily see that the hand-lever is placed at one side of the seat, precisely as in the defendant's machine.

DATE OF COMPLAINANT'S INVENTION.

As under the statute §§ 4886 and 4920, and numerous decisions, in order to invalidate a patent for want of novelty, the knowledge or use must be shown to have existed prior to the date of the *invention*. It is not sufficient to simply show that it existed before the date of the patent. We will, therefore, refer to the evidence on this subject.

For some time prior to March, 1879, the inventor had been in the employ of the Deere & Mansur Co., and in the fall of 1878 talked to his brother about the invention, but owing to his determination to change his employment, did not embody the invention in a machine.

"6 *Q.* Before leaving, did he describe to you a plan for attaching a hand-lever to a corn planter which was being manufactured by the Deere & Mansur Company, which contained a foot treadle substantially like that shown in defendant's exhibit, Atkinson patent?

"*A.* He did talk to me in the fall of 1878 regarding putting a lever onto the planter, which would be a great benefit to it with regarding handling the planter." (R., 172.)

Mr. Atkinson, the secretary of the Deere & Mansur Co., testifies as follows: (R., 148.)

"14 *Q.* Did you know of his experimenting upon a combined foot-treadle and hand-lever to be used upon corn-planters while in the employ of the Deere & Mansur Company, and if so, state the nature of such experiments, and the time when made?

"*A.* Some time before he left us, I can't tell how long, the subject of attaching such a lever to our planter, in connection with a treadle, was talked of. I know we went so far as to send over to an adjacent malleable iron shop and get a wagon brake, or the lever of a wagon brake, as being something of the form desired, and placing it in the planter in different positions. This was talked of several times, I think, and I know he had it in his mind. I am sure he had it in his mind as something desirable to get up.

"15 *Q.* Do you know whether he had any special feature in mind concerning the action of a treadle and hand-lever which he was striving to effect; if so, what?

"*A.* I can't say as to that, definitely; but from the talk, and from the positions the wagon brake was placed in, it was in a manner similar to the one he afterwards made after he left us.

"*Q* 16. Do you mean the one shown in re-issue 10,155?

"*A.* Yes, sir; I think re-issue No. 10,155 a very natural sequence to the talks and experiments in our shops, and in their direct line."

This is the only proof of oral descriptions.

In October, 1879, Michael Runstetler entered the employ of complainant as general superintendent, and within two weeks had completed a planter embodying the invention.

A second planter was completed November 28, 1879, which was used by agents in the making of sales for the next season, and about 1300 were sold for that year. (R., 164–170.)

The circular issued in December '79, or January '80, shows and describes the invention. (R., 165.)

The letter of complainant, under date of November 24, 1879, introduced by defendant, shows that at that time the invention was on the market. (R., 168.)

The original patent shows that the application therefor was filed May 17, 1880.

The fact that Runstetler, after going into the employ of the complainant, "at once put up a planter," embodying the invention, shows that his mental conception of its character and mode of operation was complete; and in view of this fact, we think the oral descriptions to Atkinson and Andrew Runstetler were sufficiently complete to carry the date of his invention back to at least March, 1879; but we do not think the Court will find it necessary to determine this question.

NOVELTY.—BURDEN OF PROOF.

The remaining defenses are want of novelty and want of invention; and the rule of law is, that before a patent can be defeated on either of these grounds, the existence of things offered to anticipate, must be shown *beyond a reasonuble doubt;* second, having been so shown, under the former of these defenses, the mind of the Chancellor *should be free from any reasonable doubt* as to the prior device being substantially like the patented; and as to the second of these defenses, *if a doubt* remains after viewing all prior devices, it should be resolved in favor of the patent.

The burden of proof, of a want of novelty, rests upon the defendant, and every reasonable doubt should be resolved against him. Coffin *vs.* Ogden, 18 Wall., 124.

"To doubt upon this point, is to resolve it in the negative." McKennan, J., 1871, 4 Fish., 482.

"The defense should be allowed to prevail only where the evidence is such as to leave no room for a reasonable doubt upon the subject." Swayne, J., 1871, 4 Fish., 560.

"The burden of proof rests upon the defendant, to show beyond any fair doubt, the prior knowledge and use set up." Wheeler, J., 1879, 4 Ban. & A., 98.

"The patent being *prima facie* good, the burden of proof on a question of anticipation is upon the defendant. Does the rebutting evidence of the complainant suggest a reasonable doubt of its truth?" Nixon, J., 1882, 11 Fed. Rep., 594.

"It follows from this declaration of the Supreme Court (Coffin *vs.* Ogden), and has been expressly decided by several Circuit

Courts, that novelty can only be negatived by proof which puts the fact beyond a reasonable doubt."

NOVELTY—DATE OF USE.

At least three of the exhibits, offered in evidence by the defendant, were not known or used early enough to in any way be taken into consideration as affecting the validity or scope of the re-issue.

The first of these is defendants' exhibit, "Kelly Model," offered in Mr. Kelly's deposition, on page 84 of defendants' record, and which the witness says represents a change he made in 1879. (Ans. 5, R., 271.)

Now, all legal presumptions being in favor of the patent, and the burden of proof to defeat being on the defendant, under the most favorable views this change can only be held to have been made on the last day of 1879, which is after complainants' invention.

But Mr. Kelly does not pretend that the *change* was embodied in a practical machine or put into use.

"Novelty is not negatived by a prior model, no matter how fully it may coincide with the thing covered by the patent. (Walker on Patents, § 61, and cases cited.)

The improvement shown by the model was not put into practice until after 1881, as appears by the testimony of Mr. Wickersham. (Ans. 12, R., 198.]

EXHIBIT WRIGHT'S MACHINE.

Second: Defendants' exhibit, "Wright's Machine," or "Wright's Planter," was not made as presented before 1880.

This exhibit was offered in testimony of Orion Dodds (R., 274), who says, John Dodds made from 800 to 1,000 planters for Wright & Eckert, for the season of 1878, and that the exhibit is now in all respects of its construction, the same as when it was made, except as to the scraper rod. (Ans. 3–7, R., 274.)

But on cross-examination says that only from 100 to 150 were like the exhibit; that all the planters were not delivered to Wright

& Eckert; that he was absent during 1879, but that John Dodds sold some of this lot during 1880, and on being asked whether the planter as first made did not employ a chain for connecting the hand-lever to the front frame, he answered:

"I can't recollect now how the first ones were made about that connection."

Defendants' witness, Newton Long, says he sold a Wright planter in 1879, and that the exhibit looks like it, or in fact is it. (R., 282.)

The witness trusts entirely to his memory for the date of the sale, and when urged on cross-examination for a reason for his belief, compresses 7½ years into 6.

Defendants' witness, D. W. Barker, says he bought the planter in the spring of 1879, and that it is now *in all respects the same as when he bought it*, except the scrapers, the runners, and the rod which connects the lever to the frame, which he had lengthened. (Ans. 5, 6, R., 281.)

But S. L. Barker, son of the last witness, mentions other changes made on the planter after its purchase. In answer 5, p. 285, he speaks of a different staple to secure the connecting link, but does not know whether this was during the first or second year they had the planter. (X-Q. 22.)

Both father and son swear that they have respectively told all the changes made on the planter, but they do not agree; and after all, the son admits that the dropper's seat on the exhibit, was not on the planter when bought. (X-Ans. 30, p. 287.)

This well illustrates how unreliable memory is.

It sufficiently appears that many changes have been made on the planter, and witnesses who forget the procuring of a new dropper's seat, without which it could not be used as a planter, might well be excused for making a mistake as to whether a link was lengthened or substituted for a claim.

Complainant, on rebuttal, examined Mr. Ritty, who was foreman of Mr. Dodds' shops from 1876 to 1884, and who remembers the making of the lot of 1,000 planters, the first of which employed a chain for connecting the hand-lever to the front frame. Many of these planters were returned, and he suggested the link instead of the chain, and it was put on about 35 or 40 in all, of

which 25 or 30 were new planters, but the first was put on in the spring of 1880. (R., 155.)

J. C. Norris, who has worked for Dodds since 1871, and who assisted in constructing these planters, says a chain was used, and that he never saw the link until shown the exhibit. (R., 153.)

If the issue here raised was to be decided by a preponderance of testimony, we think it might be shown that the "link" was not used before 1880, because the man who introduced it so swears upon the strength of a memoranda to which he refers, and another man engaged in the construction of the machines, prior to that year, never saw it.

As against which, Orion Dodds knows nothing except in a general way, and his father, who made the planters, and should know something about them, is not examined, nor is Wright or Eckert, for whom they were made.

The witness, Long, who sold the planter, is so *stupid* that his testimony is unreliable for any purpose.

The witnesses, Barker, father and son, do not agree as to the changes which have been made on the exhibit, but both agree that a change was made in the link—that it was lengthened.

Now, which is the more probable, that the man who made the change to meet the demands, made the link so short that it was impractical, as the Barkers say, and that they had to have it lengthened, or that these men who forget all about putting on a new dropper's seat, forget that they had the chain changed to a link, and that the unskilled blacksmith made the link too short, which necessitated the lengthening of it.

We think that a consideration of the testimony must result in a doubt as to the use of the link, and, under the authorities cited, the doubt should be resolved in favor of the patent.

EXHIBIT BUCKEYE PLANTER.

Third: Defendants' exhibit, "Buckeye Planter," offered on page 2 of defendants' record.

Both parties examined several witnesses with reference to this exhibit.

The tendency of defendant's evidence is to show that this particular planter was originally sold to R. W. Vincent, in May,

1878, and by him returned to the manufacturers. The Shawnee Agricultural Co., of Xenia, Ohio, during the winter of 1878–9, and by them returned to Vincent, in its present condition, on March 10th, 1879.

The complainant's testimony tends to show that the hand-lever was not gotten up until the summer of 1879, and that it was not put into use until the spring of 1880.

The story told by defendant's witnesses is so contradictory and inconsistent as to be incredible.

J. C. Vlerebome says that he sold the planter to R. W. Vincent, May 5, 1878, but that it has since been changed. (R., 220.)

R. W. Vincent says that the planter did not give satisfaction, and that he returned it to the makers in the winter of 1878–9, and received it again in March, 1879, in its present condition (R., 223, Ans. 2–4); but admits the statement to be made from hearsay (Ans. 26), and that the lever has been mended two or three times by blacksmiths (Ans. 51.)

Collier says the planter was received from Vincent late in 1878, or early in 1879 (R., 250, Ans. 82); and Trader says it was shipped back to Vincent on March 10, 1879 (R., 238, Ans. 134.) But Shafer says it was at Vincent's when he commenced working for him on March 3, 1879, and for days after (R., Ans. 3, p. 288, and 33, 44, p. 291.)

Vincent says the drill attachment was run by a chain which did not work well, and that this was remedied at the same time by lengthening the levers (Ans. 45, 46, p. 226, D.); but both Trader and Collier say that the attachment was not driven by a chain (Ans. 73. p. 233, and 94. p. 251, and 116, p. 253, R.)

Collier, Shafer and Cogan say that Collier visited Vincent's to adjust the planter (Ans. 8, 9, p. 244, 66–68, p. 293; and 22–25, p. 323, R.) Collier says this was in 1878, but the other two say it was in 1879, during the planting season. And Collier says that after this visit the planter was returned to the shop and had a new drill attachment put on. (Ans. 70, p. 250.)

Now, if Shafer and Cogan are right, the change was not made before the winter of 1879–80; and if they saw Collier at all, it could not have been before 1879, for they were not with Vincent until that year.

To show how well he remembered the hand-lever, Schafer says that when he came to hard ground he forced the runners into the ground by pressing the hand-lever forward with his foot (13, 14, p. 289), but neither he nor counsel seem, at that time, to have known that such an operation would be impossible owing to the fact that the latch would be locked, and no amount of pressure exerted in that way would be transmitted to the runners.

But after a recess he explains that he fastened the latch up with a string first. (Ans. 2, p. 294.)

Cogan makes his testimony harmonize by saying he used it in the same way. (Ans. 8, p. 321.)

The first position of Schafer is obviously impossible, and the after thought describes a practical impossibility.

Mr. Trader thinks the dropper plates now on the exhibit were on it when sold to Vlerebome. (Ans. 57, p. 232); and Mr. Collier is certain of it. (Ans. 72, p. 250.) And no person pretends that any change was ever made in these; and if so, they are the most convincing proof that the planter was not used in 1878, for defendant's witness, Lough, says that all the rotary plates used that year were of a different character, which he describes. (Ans. 37–40, 46, p. 278.) The description applies to "Complainant's exhibit, Buckeye, 1878, rotary plate," and in this he is corroborated by

Woodrow, Ans. 8, p. 160.
King, Ans. 18, p. 183.
Robb, Ans. 3, 4, p. 181.
Darnell, Ans. 7, p. 162.
Phebus, Ans. 2, 6, 10, p. 145.

THE HAND-LEVER WAS NOT MADE IN MARCH, 1879, AND CONSEQUENTLY COULD NOT HAVE BEEN ON A PLANTER SHIPPED THAT MONTH.

Defendant's witnesses, Collier, Beacham and Cannon, all agree that Beacham made the first of these hand-levers. (46, p. 248; 13, p. 269, and 5, 6, p. 262.)

But the peculiar feature of the examination of Beacham and Cannon is that neither was asked when the lever was made.

Beacham, on being recalled by complainant, says that he made the first hand-lever the latter part of May or first of June, and thinks it was 1878, but is not positive. (Ans. 4, 5, p. 179.)

This agrees with what Collier swore to on the defendant's motion to dissolve the injunction, but is inconsistent with his later statement that it was made the winter preceding.

Beacham, however, says it was tested at Bonner's within three or four days after its completion, and that after the test he changed it, and about the first week in September he made a half dozen like the one as changed. (Ans. 9–12, p. 179.) But no description is given of any of these made after the test, and the one tested was abandoned. Trader and Collier also say the first one was tested at Bonner's during the planting season, and in a field where Bonner was using a planter.

Isaac B. Jones worked for the Shawnee Agricultural Company as pattern maker for several years prior to the winter of 1878–9, and a hand-lever like that on the exhibit was not made while he was there, but during the summer of 1879 he arranged the hand-lever on the model, "Exhibit Improved Buckeye Machine." (R., p. 177.)

W. H. King worked for the Shawnee Agricultural Company from its organization until 1881; was familiar with the first lever, and its test at Bonner's, having gone with Trader and Collier to make the same. He does not say what year this was, but says there was a new Buckeye corn planter in the field from which he took a neck-yoke, as they had forgotten to take one with them, and that the old planter they tested with was at the works when he left, in 1881. (R., p. 182.)

Mr. Bonner, on whose place the test was made, says he never had but one Buckeye planter. (R., p. 180.)

C. W. Trader, having been recalled by complainant, says the planter was sold and delivered to Bonner on May 15, 1879. (R., p. 178.)

This settles, beyond any question, the date of the test of the first lever as sometime after May 15, 1879, and that it could not possibly have been on the Vincent planter in March preceding. How or when it got on to that planter is not important to inquire;

but Trader and Darnell testify that these levers were sent out separate from planters, and in this way Vincent may have got one. (Ans. 131, p. 237, and 21, 22, p. 163.)

Trader and Collier say that they sold these planters in 1878 and 1879, but they can not give the name of a single person to whom one was sold during these years, and they refuse to give the names of persons who bought planters of any kind from them during these years (115–127, p. 236. and 200–209, p. 259.) Collier admits having searched for one without success (140–143, p. 254), but when asked where sold in 1880, he gives names. (150, p. 255.)

King says the lever planter was first sold for the season of 1880. (Ans. 15, p. 183.)

Wickersham, a dealer, who sold the Buckeye up to, and including 1879, never saw one like the exhibit before 1880. (Ans. 9, p. 198.)

Woodrow, a dealer, received their *perfected* planter January 1879, but it had no hand-lever. (See cut, and Trader's letter, 161.)

Darnell sold the Buckeye planter in 1879, '80 and '81, but none of those sold in '79 had the hand-lever, and the first time he saw it was in 1880. (9, 10, 18–24, 23, p. 162.)

The defendant has offered in evidence the pattern of a former, "Exhibit Lever Former," and has examined a number of witnesses with reference to when it was made. Collier claiming that all the levers, except the first one, were formed on it, and that it was made before March, 1878; but King, who helped to make the pattern, says it was in the fall, after the test at Bonner's—that is the fall of 1879. (20, p. 183.)

Beacham says they had no former until after the levers were made in September (14, p. 180); and Cannon, who assisted Beacham, thinks it was the following season. (19, p. 270.)

Phebus, who testified to casting the former, was recalled by the complainant, and he says that he had made a great many 46), mers, and that he thinks he got this particular one mixed up he wa some of the others. (R., p. 145.)

was used do not care to criticize the evidence relating to this former independe gth, for the only relevancy it possibly can have is in so

far as it tends to show the date of the making of the hand-lever, and this, we think, we have shown beyond a doubt, not to have been earlier than May, 1879.

And in conclusion, we submit that there is no evidence of a use of the lever before 1880; but under the rule of law as before quoted such certainty is not necessary, for if there is a reasonable doubt, it should be resolved in favor of the patent.

EXHIBIT EVANS CORN DRILL AND PLANTER.

This exhibit was recently made from memory, to represent a machine said to have been made and used in 1878, but we don't think there is any satisfactory evidence of either, and that at best it was only an unsuccessful abandoned experiment.

The story about this machine, as told by A. C. Evans, is that in 1878 his company made 25 planters, and that to one of these he attached the hand-lever and its connections, when along came a farmer owning 440 acres close to Springfield, and who had that spring, bought a corn planter, but who wanted to borrow another to plant his broad acres.

This we think a highly improbable story, as wealthy farmers do not borrow their implements, and manufacturers do not lend theirs.

A. C. Evans testifies, on p. 296, as follows:

11 *Q.* State whether or not the planter which you made in the spring of 1878 was ever put into practical use, to your knowledge?

A. It was.

12 *Q.* When and where?

A. Thomas Haley, a farmer who resides close to this place, came after a planter to plant his corn with, and I let him have the one with the combined hand and foot-treadle on. It was used on his farm for the spring planting of 1878.

(Objected to as irrelevant, and for want of notice in the answer.)

13 *Q.* How do you know it was used on his farm for the planting in the spring of 1878?

A. I know it from dates that I have, and that I made five machines similar to it the same year.

14 *Q.* How much planting was done by Mr. Haley in the spring of 1878 with the planter referred to?

A. I cannot say. I went out to see the machine in operation in the fields, and saw it at work for quite a little time. It seemed to be doing very good work, and I came away.

15 *Q.* What became of that machine?

A. That machine was brought back to our factory, and was placed upon some hangers, suspended from the ceiling, on the first floor, and was kept there until our factory burned down in the spring of 1882. It was destroyed by fire, except one piece, which was saved, and is now on the planter referred to as "Exhibit The Evans Corn Drill and Planter."

L. C. Evans says, p. 317:

20 *Q.* What finally became of the machine, if you know?

A. It was burned in the fire at the time the factory burned, on West Main Street, in the spring of 1881, I believe.

A. C. Evans continues:

16 *Q.* Will you explain how you are able to remember that the planter, "Defendant's Exhibit The Evans Corn Drill and Planter," is constructed in accordance with the planter which was used on Mr. Thomas Haley's farm for the spring planting of 1878?

A. I remember it for the reason that the work was all done under my instructions, except the patterns, which I made myself. And I also remember the latch which is on the exhibit planter as being on the original planter, or, in other words, you might say the lock for locking the hand-lever and foot treadle together.

20 *Q.* What enables you to remember that the latch, which attaches the hand-lever to the foot-lever, is the same latch that you used on the machine made in 1878?

A. I remember, because it was made under my instructions.

L. C. Evans says, R., 318:

23 *Q.* Who did this work of welding and putting on the ojection at the back of the latch?

46), *A.* Mr. James Nelson.

he wa. *Q.* Were these changes in the latch made before or after was use hine was taken away from your shop, to be used at Mr. independe

A. I believe they were made after. I could not be positive as to that.

And James Nelson says, R., 319:

6 *Q.* How does the latch, which connects the hand-lever to the foot-lever, correspond with the latch which you saw on the planter in Evans' shop in the spring of 1878?

A. Why, it is just about the same; one portion is a little different from the one I forged the iron of. It didn't come out quite so far in front, that's all.

A. C. Evans continues:

21 *Q.* Why, after the use of the planter for the spring planting of 1878, did you put it away instead of selling it?

A. For the reason that we continued right on the next season building planters with hand-levers on; we put this one away for reference, as it was the first one.

22 *Q.* After the fire what was done with, or what became of the irons which formed a part of the machine which was used for the spring planting, on Mr. Haley's farm, in 1878?

A. I cannot say. I suppose they were put in the scrap pile with other iron that was taken out of the wreck, and the cast-iron part was melted over, and the wrought iron part, except the one piece, was probably sold with other rough scrap and borings that we gather in cleaning up each year.

23 *Q.* Can you produce one of the planters with a hand-lever, which your company made and put on the market for the spring planting of 1879?

A. Yes, sir; I can. This is one of them.

Defendants introduce the planter referred to by the witness, and have it marked Defendants' Exhibit Evans Planter.

24 *Q.* When were the planters similar to the "Exhibit Evans Planter" first used and made?

A. They were made and tried in the fall and summer of 1878, bnt were first put into practical use in the spring of '79.

W. T. Haley says he *borrowed* the planter instead of buyir one, because "Financials weren't plenty with me then, and I v rubbing it through as cheaply as possible." (Ans. 27, p. 306 the

That afterwards he bought one from O. H. Anderson, not or 1880, doesn't know which, but thinks 1879. (Ans. 2 ceding. inquire;

He was very well pleased with the Evans planter, it being the best he ever saw. (Ans. 15.)

But Mr. Evans was a stranger to him, and he was well acquainted with his friend Anderson, and not being prepared to pay for it he bought it from his friend. (Ans. 40.)

With the exception that he was not well acquainted with the man, he would have us believe he went to *borrow* a new planter, which, of course, could not be sold afterward as new, this story is plausible; but, unfortunately for the credit of the witness, it lacks a particle of truth.

O. H. Anderson testifies on p. 194, that he made Haley's acquaintance when he sold him the planter, April 25, 1878, and that it was paid for within three weeks.

Haley's son, who was present, and who testifies, had discovered the date of this purchase, and hence the effort on re-examination of the father to correct his errors, which leads him into further confusion by multiplying the number of Evans planters he had, and the different years he had them. (R., p. 307.)

The son, J. S. Haley, says they had a planter, and that was the reason they borrowed instead of buying. (R., p. 312.)

He testified after his father, and knowing his mistakes, gives the further reason for borrowing that his father had a notion of drilling, (Ans. 16), but since that year all two-horse machines used by them have been planters. (Ans. 44, 45.)

The planter bought from Anderson was a Buckeye, and we have seen that these were made with drill attachments, so if Haley wanted a drill he would have got one,—if he did not.

We think it is asking a little too much to expect us to believe that Haley, after buying and paying for a planter in the spring of 1878, borrowed one to do all his planting with.

It is probable that at some time Haley tested the planter for Evans, but he has no reliable recollection of when or what it was.

He admits that he talked the matter over with Evans, (Ans. 46), and, if he was as honest as his servant, C. B. Slater, who says he was told by his master to say that it was in 1878 the planter was used, (15, p. 309), he would probably admit that he had no independent recollection of the matter.

The exhibit does not represent the planter described, as appears by the following answer of A. C. Evans, p. 300:

60 X-*Q*. Explain the object of the upper end of the slot in the front leg of the standard.

A. There was a small rod connecting the front end of the foot treadle that worked up and down in the slot, and the offset in the top of the slot was for the purpose of letting the upper end of the rod fall over into the slot to hold the runners out of the ground.

It will be observed that this rod is not on the exhibit, and with the hand lever placed as it is, such a rod, could not, we think operate as described, but if it could, it only shows that the locking device on the exhibit was not intended for the purpose; but we think this answer tends strongly to show that the hand lever was not on the planter at all.

Again, A. C. Evans says, that the 25 machines were all precisely alike, except as to the hand lever (Ans. 17, p. 297), and that Ogden got one of them, which is in evidence as complainant's exhibit, "Ogden's Evans Planter." (R. 193.)

By comparing the rods which connect the foot treadles with the front frames in the Ogden and Evans Exhibit, it will be seen that the rod in the Ogden is about two inches longer than the other.

This at first sight appears a very slight change, but it tends strongly to show that no lever could have been on the planter when used by Haley, for if the longer rod be substituted in the manufactured exhibit, and the couplings made through the end holes therein, the runners can not be raised out of the ground, nor within an inch of the surface, and hence it would be impossible to operate the machine, but this is the way James S. Haley says he used it when planting in hard ground. (Ans. 27-35, p. 313.)

In the winter of 1882-3, Mr. Atkinson visited Mr. Evans for the purpose of ascertaining whether he had made anything which would assist the defense of Deere & Mansur Co. in the suit against it under the re-issue, and Mr. Evans freely told him about the 1879 planter, like exhibit "Evans Planter," but made no mention of anything like the other Evans exhibit. (6-10, p. 148.)

We think it clear, not only that the exhibit has not been constructed like the original, but that the witnesses are mistaken as to the date of the original.

The tenor of the Evams testimony is that the 24 machines were sold the year they were made, but Ogden bought his in 1880. (4, p. 193.)

Nelson gives as one reason for remembering when he saw the planter that year he bought a lot from Diebert. (14, p. 320.)

Now, the facts as to the transfer of this lot are that Washington George bought the lot from Diebert in 1877, and sold it to Nelson's wife, February 25, 1880. (See complainant's exhibit, Nelson Abstract. R. 97.)

Since offering this abstract a stipulation has been filed as to what Nelson would testify if again examined, but this only shows that he would not know whether the deed from George in 1880 was to himself or his wife Mary.

If Nelson did the work during the year that his wife got the lot it was in 1880, and this gains strength from the fact that Ogden bought one of the lot of planters that year.

There is one other circumstance which is inconsistent with these planters having been made in 1878. Evans says they commenced the manufacture of planters like exhibit Evans planter in the fall of 1878, and that these "were first put into practical use in the spring of 1879." (24, p. 297.)

S. D. Fogle, who was familiar with the Evans Manufacturing Co's works, and has sold its planters every year from 1878 to 1882, testifies that in April he visited the works and took away two planters to sell, and did sell one of them in May, 1878. These planters were like exhibit, "Evans planter." (R. p. 140.)

Folge fixes the date by a receipt produced. (45, p. 144.)

F. C. Riceansan (R. 184.) corroborates Fogle as to the style of planter made in 1878. He worked for Evans from 1876 until June 1877, (Ans. 3), and a second time from December, 1878, until March or April, 1879 (Ans. 8-12), and says that after his return to work in December they repaired the feed on a great many planters which had been made and sent out during his absence, and that these were like "complainant's exhibit, Evans model," which is the same as defendant's exhibit "Evans planter." (Ans. 13-18.)

The general construction of the planter made for 1879 was the same, but with a change of feed. (Ans. 43, p. 91.)

A. C. Evans also corroborates Fogle by the following answer: (R. p. 297.)

21 *Q.* Why, after the use of the planter for the spring planting of 1878, did you put it away instead of selling it?

A. For the reason that we continued right on the next season building planters with hand levers on; we put this one away for reference, as it was the first one.

As it was the first. The first of what? The first like those they made the next year! There is no doubt but that they did continue right on the next season building planters with hand levers like that Fogle bought, but Evans says positively that they never made more than one like the exhibit.

If Haley used the planter, as he says, it could not have had the hand lever on, and with the rod working in the slot as described by Evans, it could not have had the hand lever on.

Haley was asked on cross-examination if Evans ever took any other planter to his place for the purpose of testing it, and answers that he never knew him to take one there of any kind (Ans. 36, p. 307.)

But Mr. Ogden, whose farm adjoins Haley's, says he saw Evans testing one at Haley's in 1881 (Ans. 10-12, p. 193.)

Riceansan, worked for Evans parts of each year from 1876 to 1881, and says he put up all the shelving there was about the establishment; that he never saw a planter on a shelf there (Ans 24-28, p. 187), and never saw one like the Evans' Corn Drill and Planter. (Ans. 20, 70 and 71.)

He admits seeing a planter there which had been returned for repairs that had a seat somewhat like the exhibit, and a lever bolted to the side bar, but he can not describe it as it was not set up. (Ans. 20, 52-54.)

This, however, is not important, as there is no pretense that any machine like the exhibit was ever sold, and the planter the witness speaks of is one that had been returned to have new wheels and hopper lids put on.

The recollections of the witnesses have evidently been stimulated by the exhibition to them of the prepared exhibit and their

conversation with A. C. Evans, whose interest was so great that he got from Ogden parts of his planter in order, we suppose, to give an ancient appearance to the exhibit, and who was present during the examination of defendant's witnesses and those of complainant on rebuttal.

We, however, submit that the evidence does not bring it within the rule as to certainty, and that the doubts surrounding it defeat any claim which may be made for it.

ABANDONMENT BY EVANS.

We might admit the use of the Evans Corn Drill and Planter, as testified to by the defendant's witnesses, and yet claim that it only amounts to an unsuccessful abandoned experiment.

It appears that A. C. Evans took quite an active part in the preparation of this defence; that he is now making a planter very much like complainant's and that all the witnesses talked the matter over with him, and it is reasonable to presume that they all knew that a mere abandoned experiment would not avail anything, and hence Haley *borrowed*, but we have shown that his story about the *borrowing* was not only false, but absurd. He nowhere pretends, however, that he wanted to *borrow* any particular planter; and Evans says that the one he let him have was the only one of the kind ever made, and that it had never been tested in the field prior to the time Haley took it (Ans. 62, p. 300), and that he went out to Haley's to see its operations in the field (Ans. 14, p. 296), and afterwards sent out and got it (Ans. 28), disconnected the parts (Ans. 65), and placed them on hangers suspended from the ceiling, where it remained until destroyed by fire in 1882 (Ans. 15), or as his brother Louis says, 1881.

No matter by what name called, we think your Honors will agree with us that the facts simply show an experimental test.

Evans says that the "Evans Planter" was made in the summer of 1878 (Ans. 24, p. 297), and as appears by his patent No. 217,083, offered in evidence, he made application for the patent, Oct. 24, 1878.

At most, whatever Evans did in the way of the actuating levers, was a mere experiment. He acted as if he regarded it of no

value. It would have been of value if it had been perfected. The reason why he threw it aside as valueless must have been because it was not perfected. The case is one falling within the principle of Gayler *vs.* Wilder, 10 How, 477; Hall *vs.* Bird, 6 Blatchf., C. C. R., 438; Hartshorne *vs.* Tripp, 7 *id.*, 120; Cahoon *vs.* Ring, 1 Clifford, 592, 611, 612; and Wilson *vs.* Coon, 19 Off. Gaz. of Pat. Office, 482, and not within the principle of Coffin *vs.* Ogden, 18 Wall., 120.

NOVELTY AND INVENTION OF THE PATENTED DEVICES.

The 15th paragraph of the answer says that the claims of the re-issue are void, for that the improvements and every substantial part thereof and the same combination and arrangement of parts were fully shown, described and claimed in prior Letters Patent of the United States, of which twenty-five are set forth, but only eleven offered in evidence, (325.)

Defendant calls the attention of its expert, Powers, to these eleven patents, and asks him to make a comparison between them and the inventions specified in the first three claims of the re-issue.

The expert, having professed his familiarity with these patents, proceeds to answer, and selects four of them, viz: the Trader, the Kimball, the Schofield & Wise, and the Lane patents, in each of which, in general terms, he finds, substantially, the same foot-treadle and hand-lever claimed in the re-issue, (Ans. 5, p. 326), but entirely ignores the other seven patents.

We insist that neither one of said patents anticipates in the least either one of the three claims of complainant's patent in question, upon the following grounds:

1st. To anticipate an invention, it is necessary to show that all the elements of complainant's device, arranged to operate and produce substantially the same results, have been patented or used prior to the invention by complainant.

Bates *vs.* Coe, 98 U. S., 45.
Loom Co. *vs.* Higgins, 105 U. S., 591.
Turrill *vs.* R. R., 1 Wall, 508.
Foote *vs.* Silsby, 2 Blatch., 266 and 271.

The invention in controversy relates to an improvement in corn planters, and the claims are for the combination with the

main frame of a corn planter of a certain arrangement of hand and foot-lever, adapted to raise and lower the runner frame hinged to the main frame, and this raising of the runner frame means to lift the runner frame.

At its forward end this frame is sustained by a tongue, the extreme end of which is suspended in the neck-yoke. It is loosely hinged to the main frame, and the levers are hinged to the runner frame, so as to *lift this weight.*

This tongue is an element in allowing the runner frame to be raised or depressed by the action of the levers, and is a feature of the machine necessary to the operation of these levers in the manner pointed out in the patent.

POINTS.

The operation of each one of the patents referred to is substantially different from the operation of complainant's corn planter. The parts are differently arranged, differently combined, and adapted to operate in a different manner, which we will enumerate specifically, with reference to each particular patent.

THE TRADER PATENT DOES NOT ANTICIPATE.

This patent is for a horse rake. The head of the rake is hinged to the thills. There is a peculiar kind of leverage adapted to roll the head of the rake in the axial journals of the supporting wheels, which form the axis for the oscillation of the rake head, and the peculiar levers shown in this Trader patent are for the sole purpose of oscillating the axle to lift the teeth off the ground.

Complainant's expert testifies on this point as follows: "The Trader patent shows also the levers connected with the rake-head, and adapted to rotate it so as to raise the teeth at their free ends.

"In order to have these levers operate in the horse hay-rake, as in the corn planter, they would be required to raise the rake-head itself; or, in other words, a lever adapted to operate on a corn planter, as these hay-rake levers, would simply be adapted to raise and lower the tongue at its forward end. These being the facts, I must conclude that I do not find in either of the horse-

rake patents the combination, the construction or the operation forming the subject matter of the claims in the re-issue," (p. 203.)

This testimony of Mr. Richards is in harmony with the language of the Trader patent.

An analysis of the Trader device shows, first, the levers hinged upon the thills, the thills hinged to the axle, the axle journaled in the supporting wheels, a chair H on the cross-bar N, a bracket M on axle P, a foot-lever G pivoted on the chair H, a link-lever L hinged to the lever G and bracket M, and these arrangements are such as that the depression of the forward end of link L and the rear end of lever G will *roll*, not *lift*, the axle P.

The description of the operation of these levers shows that it contains no locking devices of any sort, but, on the contrary, in the language of the Trader patent, "the operator keeps the rake to its work by the gentle pressure of one foot on pad I."

This operation is wholly unlike the operation of complainant's invention.

The complainant's device may be used as a yielding planter, in which the levers move up and down freely; or, it may be locked in variable fixed positions by means of a lock attached to the hand-lever, working through the foot-lever.

Again, the hand and foot-levers of the complainant's corn planter may be used independently to raise the front runner frame by lifting it. No such lifting levers are shown in the Trader patent, but, on the contrary, levers to roll the rake head so as to clear the teeth of hay, the operator is obliged to use, *first*, the foot to bring the hand-lever within reach, and then the hand-lever to finish the operation of rolling the rake-head. As stated in the language of the patentee, when he desired to dump the load, he "*changes his foot* to pad K, a slight pressure upon which, with the *assistance* of the hand-lever F," performs the operation. We submit, therefore, that the arrangement of the foot-lever and the hand-lever, so that the driver's feet are not required, in ordinary work of the rake, is not found in the Trader patent. The office of the hand-lever in the latter is merely to *assist* the foot-lever, and this foot-lever is a compound link-lever, the link L and lever G operating as a rule joint, and must be depressed or bent

to roll the rake head. Remove the link L, and the foot-lever G and hand-lever both become inoperative.

It is manifest that this Trader patent wholly fails to show the organism of complainant's corn planter, designed to lift or depress a frame, either by the hand or foot-lever, singly or by both combined, in the manner, and for the purpose specified by Runstetler.

NOVELTY—THE KIMBALL PATENT DOES NOT ANTICIPATE.

Mr. Powers testifies (327) that this does not resemble complainant's patent as nearly as Trader's.

Mr. Richards testifies (R., 203) as follows: "In the Kimball horse-rake patent the foot-levers are simply crank projections from the tilting rake-head which carries the teeth which it elevates, and I cannot see or conceive of any manner in which the corn-planter lever could be attached or fulcrumed to the forward frame which it elevates."

Then he concludes that none of the rake patents, including the Kimball, show such an operation as is required to operate the runner frame of the corn planter.

An examination of the Kimball patent will confirm Mr. Richards' testimony. The rake head is journaled or hinged to the thills, and the foot-levers, so-called, are simply two right-angled crank projections attached to the rake head like the spokes of a wheel, one of which is employed to roll the head forward, the other to roll it backward.

The hand-lever J is mounted on the axle, and is connected by the link K to one of the arms or foot of cranks I, so that the lever may be used to oscillate the rake head.

It will be readily observed, first, that the feet of the operator are required to be kept in position on the crank arms I, to hold the teeth down to their work; and, second, that the levers are not shown as adapted to elevate the runner frame of a corn planter.

Defendant's expert has not attempted to show how those levers could be operated upon a corn planter. And as no one has ever attempted, so far as the corn planter art shows, to use such a lever arrangement, we must leave it to the vivid imagination of

counsel to invent a way in which the Kimball device could be practically used like complainant's. In the eyes of the law, it is not such an organized machine as will anticipate the complainant's claims.

THE SCHOFIELD & WISE PATENT DOES NOT ANTICIPATE.

Defendant's expert, Powers, does not pretend to say that this device shows substantially such a mechanism as that of complainant's patent. He simply says that the treadle and hand-lever have "substantially the raising and depressing functions of complainants' device." (327.)

Complainants do not claim to be the first to employ hand and foot-levers which have a raising and depressing function.

Mr. Richards testifies with reference to this patent (204), as follows: "In the Schofield & Wise patents, the levers for raising and lowering the rake teeth are also nothing more than crank arms projecting from the tilting rake-head which carries the teeth. They are not in any sense levers hinged to one frame, and adapted to act on another frame."

The function of elevating the runner frame by levers hinged to the main frame, is an essential requisite of complainants' claims. As these are not found in the Schofield & Wise patent, it is manifest that it is not legally an anticipation, as the levers are constructed and arranged in a different manner to roll or tilt and oscillate the rake-head instead of elevating or depressing the separate frame, as in the Runstetler patent.

THE LANE PATENT DOES NOT ANTICIPATE.

Defendant's expert contents himself with stating in general terms that this device shows a "foot-treadle device, and hand-lever adapted to raise or depress a plow in its work, and in character and function no way dissimilar in principle to that of complainant. Mechanically, the device is different, but the object is the same." (327.)

Mr. Richards testifies (204), in substance, that the Lane patent shows a different organization from a corn planter. It does not contain any forward or rear frame, essential in a corn-planter device. It does not show any means for raising the forward frame.

"Neither does it show a foot-treadle and hand-lever adapted to be used in conjunction, or independently, for the purpose of elevating or depressing any part of the device."

In answer to question 4, on the same page, he analyzes the necessary elements required to throw the plow out of the ground, and shows them to be essentially different, that the depth of the running of the plow is not regulated through the medium of the levers, as the depth of the runners in a corn planter is regulated by the hand-lock lever devices.

In this device it is manifest that the hand-lever is one end of the foot-lever; that two connections are required to the plow—a forward and a rear one—so that one part of the lever must act to bear down over the pivoted beam, while the other lever connections are lifted up to raise the plow out of the ground, and that foot and hand-lever are to be used conjointly.

The construction, arrangements, organism and method of operation of the Lane sulky plow are so palpably different from the devices shown in the Runstetler patent, that we will dismiss further consideration of it.

NOVELTY—CORN PLANTERS.

And herein of:

EXHIBITS: "WRIGHT'S PLANTER," "BUCKEYE PLANTER," AND "EVANS CORN DRILL AND PLANTER."

The defendants insist that the following planters, which are illustrated by full-sized machines, anticipate the claims of complainants' patent.

We will consider them with reference to the first claim of the patent, which if not anticipated, will carry with it the novelty of the second and third claims, which add other features to the combination specified in the first claim.

We have already shown that the "Exhibit Wright Planter," "Exhibit Buckeye Planter," and the "Exhibit Evans' Corn Drill and Planter," are not shown to have been constructed or used prior to the date of complainants' invention; and we think we might safely rely upon this defense, but we have no objection to your Honors considering these machines, for an examination of

their existing defects will show that there are manifest reasons why they were laid aside, or have gone out of date, as they all have. And this examination we think, will conclusively establish the fact, that these machines in and of themselves, do not accomplish satisfactorily to the public the results required by corn-planter manufacturers, dealers and users at the present time. That as compared with the patent of complainant, they are substantially different in principle, different in construction, and not satisfactory as regards the character of results produced. We, in fact, think, if your Honors please, that they prove *invention of great merit in the complainant's* device.

They show that it was difficult to work out the necessary character, combination and operation of devices to perform satisfactorily what the complainant has done. And that the attempts made by the construction of these planter devices, even if all are conceded to be of an earlier date than complainant's invention, show that it was not easy or obvious to attain the results accomplished by Mr. Runstetler, and they fall short of what is requisite to the practical operation of corn planters.

Under this head we make the following point, with reference to each one of the machines, under the assumption that they were constructed prior to the date of complainant's invention.

They do not show the same organized mechanism, operating in substantially the same manner, and producing the results accomplished by the combination specified in complainant's first claim. This claim we will again quote:

"In a corn planter having the rear main frame mounted on supporting wheels, and the front runner frame hinged or pivoted to the main frame, the combination of a foot-treadle and a hand-lever adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners, substantially as herein set forth."

And we will compare each of these machines separately with this claim;

CHARACTER OF DEFENDANT'S EXPERT TESTIMONY.

The testimony of Mr. Powers, in regard to the novelty of complainant's patent, when read in connection with the various exhibits spoken of, is, to say the least, peculiar.

The impression which we get from reading his answers and conclusions is, that he finds that all the corn planters and patents alluded to are substantially like the devices specified in complainant's claims. That the differences are incidental and trivial, and it follows logically, if that is true, that these various devices are like each other. That there is substantially no difference between any of the planters above alluded to.

It must be remembered that complainant's invention has been adopted by the defendants, by Beedle & Kelly; by the Deere & Mansur Company, and many other manufacturers, and that it has superseded the older forms of corn planters.

We think the defendants in this case are fairly subject to the criticism of Mr. Justice Grier, in Sickles *vs.* Gloucester Manufacturing Company (1 Fish , 226). It is as follows:

"That this invention of Sickles is one of very great value, is also clearly established. But it has met the usual fate of such inventions. Undervalued, and even persecuted at first by ignorance and prejudice, when at length it has compelled an acknowledgment of its merits, every contemporary failure to do the same thing is raked from oblivion, antedated, and its merits magnified, by the fruitful imaginations of willing or malevolent witnesses."

We do not think your Honors can, after examining the exhibits, respect the opinions of Mr. Powers, when these devices have been separately considered and compared with the patent.

THE KELLY MACHINE AND PATENT.

It is conceded that this machine is substantially like the Kelly patent, except that it has the holding down notch upon the rear side of the adjusting latch, instead of upon the front side.

This device was before his Honor, Judge Withey, on the motion for preliminary injunction, and was properly held not to anticipate complainant's claims.

Mr. Richards, in answer to cross-questions (54–59, p. 136), has briefly stated the practical differences between this corn planter and that of complainant's, which are: first, the Kelly device does not show an elevating and depressing foot-lever, which is an essential element of complainant's claim. The foot-lever of the

Kelly patent can be used for elevating only, and to use the hand-lever, a detachable latch or hook bar must be employed, which has to be connected in one way for elevating, and disconnected and re-connected in a different manner to hold the runners in the ground, but the hand-lever can not be used alone for elevating the runners, it must work in conjunction with the foot-lever which the operator must first bring into the proper relation to be engaged by the latch with the hand-lever, before the latter can be used to assist in raising the front runner frame. This necessary change of the connection in the act of raising the frame makes the device a very imperfect one, and the opinion of the court in passing upon the question of anticipation at the hearing for preliminary injunction, is manifestly correct according to the testimony of Mr. Richards, this testimony is confirmed by Mr. Kelly, the inventor himself, who has testified in substance (p. 270), that in 1879 they had to change the planter, and put on the automatic hook, for the reason, as he states, "In hard ground the runner part is not sufficiently weighed to plant it deep enough, then we lock it in with that latch in connection with the automatic hook and lever."

Mr. Wickersham testifies that without this latch, the notch on the hook which held the planter in the ground would "fly out in rough ground or crossing a dead furrow." (R., 198.)

Mr. Bates testifies that he had a corn planter like the Beedle & Kelly machine, but it did not operate satisfactorily, because he could not force the runners into the ground, so he resorted to the expediency of putting a boy upon each seed box. He testifies as to that machine, he did not know what persons who did not have such a surplus of boys did do in order to make the machine work, unless it was to weight it with stones. (R., 195.)

KELLY MACHINE ABANDONED.

But even with this additional lock piece, the Kelly machine was not satisfactory to the public, because of the necessity of changing the position of the latch, in order that the hand-lever might be used to assist in raising the runner frame, and from the lack of simplicity and availability of the foot-lever. Mr. Kelly has testified that they have changed the machine to correspond with the exhibit model of Beedle and Kelly's 1884 planter.

It will be seen at a glance that this is a substantial copy of the Farmer's Friend corn planter. This imitation of the Farmer's Friend is so close that Mr. Bates, who had one of the first Champion planters, saw this Improved Champion, as it was called, operated in the field by one of his boys, who was at work for his neighbor, and he followed the machine once around the field, and supposed it was the Farmer's Friend, until he was told differently. (R., 197.)

The testimony of witnesses Wickersham and Bates, taken in connection with the abandonment of this device by Beedle & Kelly, shows conclusively that practically these two machines are not considered the same as complainant's, by either the manufacturers themselves, the dealers or the users.

Mr. Wickersham testifies further (p. 199), that complainant's machine would be worth at least $5.00 more than the Beedle & Kelly. Mr. Atkinson (p. 150, Ans. 23), testifies that the salability of that machine had been so badly injured, that the manufacturers were obliged to remodel. Mr. Runstetler (p. 173) testifies that he thinks a party could not pay expenses in selling the Champion planter. The practical difference, therefore, between this device and complainant's, is a substantial one.

In the case of Smith *vs.* Goodyear Dental Company (93 U. S., 495), the Supreme Court say:

"The utility of a change as ascertained by its consequences, is the real practical test of the sufficiency of an invention, and since the one can not exist without the other, the existence of the one may be presumed on proof of the existence of the other. Where the utility is proved to exist in any degree, a sufficiency of invention to support the patent must be presumed. We do not say the single fact that a device has gone into general use, and has displaced other devices which had previously been employed for analogous uses, establishes in all cases that the later device involves a patentable invention. It may, however, always be considered, and when the other facts in the case leave the question in doubt, it is sufficient to turn the scale."

Recognizing this principle, Judge Blodgett, in the case of Brown Manufacturing Company *vs.* Deere (21 Fed. Rep., 712), states the rule thus: "The fact that not only the defendant in

this case, but other large manufacturers of cultivators, have at once adopted substantially the same auxiliary lifting devices, shown in the complainant's patent, is evidence of the absolute acceptance of this as a practical solution of many of the difficulties which had been encountered in the attempt to use the older device, and is such a change and improvement as required more than mere mechanical skill, and brings this device fairly within the domain of the patent law."

The single fact that the Beedle & Kelly machine does not have the elevating and depressing foot-lever specified in the claims of complainant's patent, would be of itself a sufficient answer to its alleged anticipation, but the whole device considered practically, is now made obsolete by the superior merit of the Runstetler invention.

WRIGHT PLANTER OF 1876.

We do not think counsel for defendants will insist that this is an anticipation of the Runstetler patent, notwithstanding the fact that their expert considered it the same, as the second Wright machine. Manifestly in the former planter the hand-lever does not force the rnnners into the ground in any manner whatsoever. It therefore can not anticipate a claim where such a function is a necessary element.

THE WRIGHT PLANTER.

We have already shown that this device did not exist prior to the date of complainant's invention, and is therefore not an anticipation of the invention specified in the patent in issue.

The testimony shows that the links were put upon this second machine in lieu of the chains used in the former machine to connect the hand-lever to the runner frame for a make-shift, to prevent a total failure of the Wright planter.

Mr. Richards, on page 206, states the deficiencies of the device as follows (Ans. 7):

"The hand lever in the Wright machine, on account of the stop on the forward end of the rack segment, can not pass any further forward than is shown in the machine as it now stands, and in that position the hand lever would not permit the runners to enter

the ground deep enough for a practical planter, in dry ground, dry seasons, and at such times and places as it is necessary to plant deeper; and when the hand lever is thrown backwards, it will not go back far enough to raise the runners high enough above the ground for operation in the field, for instance in turning, when the wheels were in a low place, or even in a slight depression, the runners would scrape sideways in the ground, and interfere with the operation. The Wright machine can only be adjusted to plant at a depth a little over two inches, as the wheel will sink into the ground somewhat, and even as it now stands on the hard floor, and adjusted on the blocks, it can not be said to plant three inches in depth. A corn planter should have capacity to plant from three to five inches in depth, and some persons, in dry seasons and in dry soil, want to plant deeper than five inches."

The complainants have examined several other witnesses in regard to the practicability of this device. Mr. Wickersham (p. 198, ans. 12-37) testifies that such machines would not sell for $10.00 in his territory. Mr. Atkinson (p. 150, ans. 24) testifies that it is a decidedly inferior machine, and its salability correspondingly restricted. He says that it would hardly sell in his country. "There wouldn't be a large market for it, if any."

Mr. Runstetler (p. 173, ans. 12) thinks the Wright planter would not be salable.

By the testimony of Mr. Norris, it will appear (R. 154) that there were only one thousand of those planters ever made. It took them about five years to sell them. See also testimony of Ritty (p. 156, ans. 10-13), and that the change from the chain to the link for the hand lever connection was made in 1880, in order that the machines carried over from year to year might be disposed of.

An examination of the machine itself will, we think, readily convince your Honors that it is a trappy inferior device. We do not wonder that it took the combined efforts of Wright and Dodds so long to dispose of these trappy affairs.

Practically and mechanically, the Wright planter is materially unlike the invention of Runstetler, which has proved a marked success, in contra-distinction of the failure of the Wright planter.

THE BUCKEYE OR TRADER PLANTER.

An examination of this device will show that it has no elevating and depressing foot lever, which is an essential feature of each one of complainant's claims.

We have already shown that this device is of later date than complainant's invention. Its career was one of hardship, failure, and then abandonment. The organization and construction of the machine is widely different from that of complainant's or defendant's corn planter.

Mr. Wickersham, who used the corn planters manufactured by these parties, exactly like the exhibit, with the exception of the hand lever devices, examined the exhibit in question, and stated (R. 199, ans. 15): "It would not sell at all, not in our territory. It wouldn't sell for $10.00."

Mr. Williams (R. 158, ans. 8) says of this Buckeye planter: "I think it is to complicated and the character of its construction is such that it would not be marketable in our market. I dont regard their raising and lowering as practical at the present day."

Mr. Baker says (p. 175, ans. 9): "Well, I shouldn't regard it a planter that would sell with us at prices of first-class goods."

Mr. Runstetler (p. 173, ans. 12) regards it as scarcely salable.

Mr. Atkinson (p. 149, ans. 22) says: "I do not think it would be at all salable in the present state of corn planter arts, or corn planter trade."

These witnesses are all men of practical experience as to the wants of the users, and the demand of the trade.

Considering this planter, therefore, in its *practical* value, as compared with the complainant's corn planter, it is certainly substantially unlike the latter.

Mr. Curtis, in his fourth edition on Law of Patents (p. 431, sec. 331), in speaking of the patent law, says:

"Its leading purpose was to encourage useful invention; practical utility was its object, and it would be strange if with such object in view, it should consider two things as substantially the same, which practically, and in reference to their respective utility are substantially different."

This principle we understand to be observed by the Supreme and Circuit Courts in adjudicating upon the novelty of invention.

If the complainant's patent practically advances the art, and makes a substantially better machine, it ought to be sustained.

The nice distinctions of mechanical equivalents are considered in a practical manner, and practically two things are never held to be the same when one is materially and substantially better than the other.

The testimony shows this Buckeye planter to have been abandoned. That this peculiar hand lever was ingrafted upon a machine which was partially a failure, to try and help it out, but it certainly did not impress the manufacturers as being of much, if any, value, or they would not have ceased its manufacture. While the complainant's invention has been constantly growing in favor and salability.

THE EVANS CORN DRILL AND PLANTER.

This drill, as we have already shown, was never used but once, and then laid aside, and a different planter adopted by Mr. Evans, the manufacturer.

Defendants do not attempt to show its practical value. Mr. Richards testifies in regard to its practicability (p. 208, Ans. 10), as follows: "I have very carefully examined the planter referred to in the question, and while I consider that a person might plant corn with it, in as far as the system of levers is considered, in raising and lowering the forward frame, it would require a good deal of skill to operate it, and if placed in the hands of persons such as ordinarily operate corn planters, would be, in my opinion, a failure, practically, and that even a skillful operator would have a great deal of difficulty in operating it, principally on account of the changes that have to be made in the connection between the levers to adapt them to raise and lower the runner frame. I think the wants of the trade at this day would not be met by that machine, and for that reason that it would not be salable."

He is corroborated by witness Baker (p. 175, Ans. 13), Runstetler (p. 173, Ans. 12), Wickersham (p. 199, Ans. 17), and Mr. Williams (p. 158, Ans. 6 and 7), who regard it in an unfavorable light. Surely if this device were practically the same as complainant's invention, it would not have been abandoned by Mr. Evans and thrust aside as useless, and a different corn planter adopted by him for manufacture and sale.

It is a pertinent question why this Evans machine was not manufactured and sold, if it in fact accomplished the beneficial results which the party at once acknowledged to be found in complainant's invention.

The position of defendants is clearly that "wisdom which comes after the event," and which can not be allowed to destroy the claims of the original and *bona fide* inventor. (See Waterbury Brass Company *vs.* Miller, 5 Fish., pp. 62–3)

We submit that the evidence in regard to these corn planters brings them all fairly within the criticism of the Supreme Court, in the case of Loom Company *vs.* Higgins, 105 U. S., 591.

The same doctrine was stated by the late Mr. Justice Swayne in the case of Wood *vs.* Cleveland Rolling Mill Company. (4 Fish., 559.)

"In the fossils of geology, belonging to certain classes of animals, regular gradations from a low form of organism to a much higher one are found to exist. The contrast between the highest and the lowest is very striking. The same thing takes place in the progress of inventions. Models and machines in the same series, upon inspection, not unfrequently exhibit curious points of analogy to such fossils. Sometimes one will be found to reach almost the highest point afterward attained, but to fall short of it.

"The difference is that between success and failure.

"When a great success is achieved in the field of mechanical invention, and the higher organism is protected by a patent, it is almost as certain that invasions will follow as that there exists the relation of cause and effect. Such is the voice of universal experience.

"When the infringer is called to account, one of two defenses is usually set up, and frequently both. First, that the invention in one of the lower grades is substantially the same with that of the patentee. The confidence of the attacking witnesses is often in proportion to the distance in time, that one is removed from the other.

"Their imagination is wrought upon by the influences to which their minds are subjected, and beguiles their memory.

"When the defense is made, it is the duty of Courts and Juries to give it effect. But such testimony should be weighed with care, and the defense allowed to prevail only where the evidence is such as to leave no room for a reasonable doubt upon the subject."

All the above enumerated machines belong to the lower grades of corn planters.

The world has practically said they are vastly inferior to the complainant's invention, and the defendants themselves, by adopting the complainant's form and arrangement of levers, instead of those antiquated and abandoned devices, corroborate our position, and are estopped from denying its superior utility.

THE RE-ISSUE INVOLVES INVENTION.

We do not understand exactly what legal defenses are intended by the 17th and 18th paragraphs of the answer, but we will give them a liberal construction, and assume that it is intended to argue, that, in view of the state of the art, as exhibited in the proofs, the re-issue does not involve invention, within the meaning of the patent law.

This defense may be urged where the changes in a patented device over what preceded it are merely trivial.

The utility of the Runstetler invention over all other corn planters introduced by the defendant, and the manifest difference between its mechanical features, and those of any of the alleged older devices, effectually dispose of this defense.

COMBINING OF THE HAND LOCK-LEVER WITH THE FOOT-LEVER, AS ARRANGED IN THE RE-ISSUE, IS INVENTION, IF IT PRODUCES NEW AND USEFUL RESULTS.

The defendant is understood as insisting that the use of the Trader-lever devices on complainant's corn planter would not be invention, but the substitution of one old known device for another.

It must be remembered that this Trader lever was used for years on a horse hay-rake by Trader and Collier, and that in trying to get a hand-lever in combination with a foot-lever, they

produced the "Buckeye Planter," the manufacture of which was abandoned as soon as they could dispose of the first lot, which took several years.

We have seen that Kelly, Wright and Evans each made attempts to improve their planters upon principals of their own, and independent of Runstetler's efforts, but these all stopped short of the success Runstetler attained. In view of these facts, the decision of the Supreme Court, in the case of Loom Co. *vs.* Higgins, seems pertinent and decisive in favor of the validity of the complainant's patent.

The court say:

It is further argued, however, that, supposing the devices to be sufficiently described, they do not show any invention, and that the combination set forth in the fifth claim is a mere aggregation of old devices already well known, and therefore it is not patentable.

"This argument would be sound if the combination claimed by Webster was an obvious one for attaining the advantages proposed, one which would occur to any mechanic skilled in the art. But it is plain from the evidence, and from the very fact that it was not sooner adopted and used, that it did not for years occur in this light to even the most skillful persons. It may have been under their very eyes; they may have almost been said to have stumbled over it; bnt they certainly failed to see it, to estimate its value, and to bring it into notice. Who was the first to see it, to understand its value, to give it shape and form, to bring it into notice and urge its adoption, is a question to which we shall shortly give our attention. At this point we are constrained to say that we cannot yield our assent to the argument that the combination of the different parts or elements for attaining the object in view was so obvious as to merit no title to invention. Now that it has succeeded, it may seem very plain to anyone that he could have done as well. This is often the case with inventions of the greatest merit. It may be laid down, as a general rule, though perhaps not an invariable one, that if a new combination and arrangement of known elements produce a new and beneficial result never attained before, it is evidence of invention."

If the combined use of the foot and hand-lever to accomplish the new and useful results shown in the Runstetler patent were so obvious, why were they not sooner adopted?

It is plain, from the fact that it was not sooner adopted and used, that it was invention. It was under Trader's and Collier's very eyes. They almost may be said to have stumbled over it, but they failed to estimate its value. Runstetler was the first to see it and urge its adoption; the same is true of Kelly; not until after Runstetler had his invention on sale for years did Kelly appreciate its value.

"In the case of La Baw *vs.* Hawkins, 1 B. and A., 436, Judge Nixon said: 'It is hardly necessary to refer to authority to show that where an original inventor has perfected his improvement, whereby he puts the public into the possession of his invention, and has obtained his patent, its validity is not to be assailed nor its value destroyed, as was so well said in Hitchcock *vs.* Tremaine (9 Blatch., 550), by allowing infringers and rival inventors to set up crude and unsuccessful experiments as anticipating it, in describing which dim recollections are stimulated, and the consciences of witnesses strained in their attempts to clothe with living flesh what had always remained an inert and useless skeleton. Such cases as Ranson *vs.* Mayor (1 Fish., 252), Cahoon *vs.* Ring (1 Fish., 397), Goodyear *vs.* Day (2 Wall, Jr., 283), and White *vs.* Allen (2 Fish., 453), exhibit the well-settled law on this subject."

CONCLUSION.

Viewed from the standpoint of utility, we believe the Runstetler invention to be the most important improvement in this field of invention, in which over 1,200 patents had been issued before his, and that it has advanced the art of corn planting more than anything which proceeded it.

All the older devices are open to the defendant to use, but the improvements in question belong to the complainant, and we respectfully submit that the decree of the Court below should be reversed.

E. E. Wood,
Edward Boyd,
Of Counsel for Complainant.

Cincinnati, *Nov.* 5, 1888.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK

Robert Clarke & Co., Printers.] [*November, 1888.*

United States Supreme Court,

OCTOBER TERM, 1888.

The Farmers' Friend Manufacturing Co.,
Appellant,

No. 92.] *vs.*

The Challenge Corn Planter Co.

BRIEF FOR APPELLEE.

ARTHUR STEM,
Counsel for Appellee.

Robert Clarke & Co., Printers.] [*November, 1888.*

United States Supreme Court,

OCTOBER TERM, 1888.

The Farmers' Friend Manufacturing Co.,
Appellant,

No. 92.] *vs.*

The Challenge Corn Planter Co.

BRIEF FOR APPELLEE.

This is an appeal by the complainant from the decision of the Circuit Court for the Western District of Michigan.

The suit was brought on re-issued letters patent, No. 10,155, for improvement in corn planters, granted the appellant, as assignee of M. Runstetler, July 11, 1882 (p. 389).

The Circuit Court held the re-issue invalid, as not for the same invention as the original. Rec., p. 108. From this finding, the district judge dissented. Rec., p. 110.

The defenses relied upon were:

1st. Want of invention.

2d. Want of novelty.

3d. Invalidity of re-issue because it is not for the same invention as the original, and for laches.

In order to intelligently judge of the validity of the re-issue, it is necessary to know and understand the state of the art prior to the alleged invention. We therefore

briefly present, first, the facts showing the history of the alleged invention or discovery, and the state of the art prior thereto. And, for the convenience of the court, will add, at the end of the brief, an abstract of such testimony, with reference to the pages of the record, as bears upon the issues made.

The subject-matter of the claims sued on is the combination in a corn planter, of a hand and foot lever to be used, in conjunction, or independently, for the purpose of elevating and depressing the runners.

The claims of the re-issue sued on are as follows:

I. In a corn planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, the combination of a foot treadle and a hand lever adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners, substantially as herein set forth.

II. In a corn planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, a foot treadle for elevating or depressing the runner frame, in combination with a hand lock lever, the foot treadle and hand lever adapted to be used in conjunction for forcing and locking the runners into the ground or lifting and locking them out of the ground, substantially as herein set forth.

III. In a corn planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, a foot treadle for elevating or depressing the runner frame, in combination with a hand lever rigidly connected therewith, that either hand lever or treadle may be used for forcing the runners into the ground or lifting them out of the ground, substantially as herein set forth.

The first claim differs from the second only in that the lock claimed in the second is not made an element of the first. The third differs further in that it omits the lock and is confined to planters in which the hand and foot levers are rigidly attached together.

Complainant's expert has, we think, fairly construed

these claims to be for the combination of a hand and foot lever which can be used separately or jointly for elevating or depressing and locking the runners. Rec., p. 129; also p. 134, ques. 44 and 45. He admits that the hand lever with the lock was old; that the foot lever is the same as the one in the Atkinson patent (p. 337); but that the invention consisted in combining the two in one machine. There was nothing new in the general construction of these machines. All corn planters then and now consisted of a "rear main frame mounted on supporting wheels and a front runner frame hinged or pivoted to the main frame." They differed somewhat in the arrangement of the hand and foot levers for raising and depressing the runner frame. Judge Withey, in his dissenting opinion, Rec., p. 110, says: "Hand and foot levers are old and have long been used on many kinds of machines separately and combined."

We start, therefore, with this proposition established and admitted, that the only invention shown in the patent consists in the combination in one machine of two devices, neither of which was itself new, and neither of which performed any new function or purpose beyond being put on the same machine to be used together. The claims are all substantially for the same combination. The omission in two of the lock, and in another of the *use* of the foot lever *for depressing*, do not alter the substance of the invention claimed.

The history of this alleged discovery or invention is suggestive. The patentee, Runstetler, was, prior to his engagement with the complainant, in the employ of the Deere & Mansur Company, and while there he claimed to have invented the foot lever shown in his patent. Rec., p. 172. This lever was patented to Mr. Atkinson, and the application of Mr. Runstetler was put into interference with Atkinson's patent. The Patent Office, after a very full trial, held that Atkinson, and not Runstetler, was the inventor. As a result of this controversy, Runstetler left the Deere & Mansur Company, and entered the employ of the complainant, who immediately began manufacturing this lever, and undertook to prosecute Runstetler's claim.

Now, it had already occurred to Runstetler, as well as many others, that a hand lever to assist the foot lever would be desirable in this class of machines. It was not new to use hand levers on corn planters in connection with foot levers for elevating and depressing the runners. Such a combination of foot and hand levers is shown in the Kelley patent of 1875. Rec., p. 349. This Kelly planter differs from complainant's only in that the foot lever is not provided with a foot piece for depressing the runners; the hand lever may be used to elevate or depress the runners, and lock them in any desired position.

The Wright planter of 1876 also had foot and hand levers for the same purpose. These levers were attached to the runner frame by chains instead of a solid link. In the Wright planter made by John Dodds in 1877, a solid link was substituted for the chain on the hand lever. The hand lever in these Wright planters is almost identical with the hand lever in complainants' patent. One, we think, could be substituted for the other in the complainant's machine without material change. They were made and sold in considerable numbers at Dayton, where complainant's shops are located. Two corn planter manufacturers in the same town are sure to know the construction of the machines made by one another, and we may say, without hesitation, that Runstetler saw the Wright planters, and was familiar with the Kelly or Champion. Atkinson says (p. 147), that Runstetler had tried to make a hand lever to work with his foot lever before he left the Deere & Mansur Company, but he never succeeded. After seeing the Wright planter he had no difficulty, for he simply took the Wright hand lever and put it on complainants' machine. This complainants call a discovery, a new invention, and they proceed to apply for a patent. There may have been something new in Runstetler's planter rising to the dignity of invention. He may have employed new devices in attaching the levers to the machine by his slot, or in attaching them together by the shaft "d," described in the patent and made an element of the claim in the original. But it can hardly be maintained that it was invention to

bring together two old devices in one machine, in which they perform no new functions or operate in no new manner, and from which, if either were taken, the other would operate precisely as it had before. Such an arrangement does not constitute a combination under the patent law. It is only aggregation.

But it was a habit of these complainants to adopt the best features of their rival's machines, and, if possible, secure a patent for combining them. They adopted Atkinson's foot lever, and were sued for infringement. They then took Wright's hand lever, and secured a patent for combining it with the Atkinson foot lever. This was only one instance of their peculiar methods, as illustrated by their own words. On the 24th of November, 1879, the complainants wrote to one of their agents or customers as follows (Rec., p. 168):

"*Nov.* 24, 1879.

"J. A. OUTEN, *Danville, Ill.*

"*Dear Sir:*—We have yours of the 22d inst. Will you handle our drill, if satisfactory arrangements can be made on both the drill and planter? The drill we can furnish as low as any first-class machine, but no lower; but we will make a low price on the planter, if you will handle them both. Let us know about this, and how many you will order of each kind, to guide us in making a discount. Mr. Runstetler, who is the originator and patentee of the Deere planter [this the Patent Office and the court held was not true], is now with us. We have taken the best features of that machine and the best of the Champion, and added a few improvements of our own, which puts us at the head of the planter trade. We have a foot treadle for managing the runners, and a hand lever with which we can lock them in any position, and throw the whole weight of the driver and the runner frame on the runners. Either this lever or the treadle can be used, which is of the greatest advantage in working up the trade. Yours truly,

"FARMER'S FRIEND MFG. CO.

"(STENOGRAPHER."

The Champion machine is the Kelly planter, and was better known than the Wright planter, and was especially distinguished for its successful hand lock lever combined with a foot lever, and was probably the first planter ever made with hand and foot levers combined, and which complainants' witness, Lafevre, says, p. 139, was the same as complainants' machine. Runstetler took, by complainants' own acknowledgment or boast, the foot lever of the Deere planter (Atkinson's lever) and the hand lever of the Champion (Kelly planter), and "*added a few improvements of his own.*" Is this invention?

They proceeded to take out a patent for these "few improvements of their own," and nearly two years later enlarge it by reissue to cover even the machines they had copied. But let us see what these "few improvements of their own" were. Bearing in mind that it was not new to combine in a corn planter of this construction a foot lever with a hand lock lever, what did Runstetler do? He began with the Deere (Atkinson) foot lever, admitted to be identically the same as on complainants' machine and in complainants' patent. He next took the Wright or the Champion hand lever, shown to be old, one of them manufactured in the same town of Dayton, and the other in a town a few miles distant (Troy, Ohio), and put them on one machine. This combining a hand and foot lever might be done and had been done in a variety of ways. Runstetler constructed a shaft, marked "d" in his patent, and journaled at the point where foot and hand levers are usually journaled—precisely where the shaft in the Wright planter is journaled, and where the foot lever in the Deere planter is journaled. To this shaft he attached rigidly these two old levers. Perhaps there is something novel in this shaft. He claimed there was in his original patent, and it was only in combination with this shaft that he claimed the levers. Admitting his claim to it, he has abandoned it in the reissue. It was not infringed. He now claims broadly to have invented the combination of a hand lever with a foot lever in a corn planter. A broad claim for any hand and foot lever united in one

machine, to do exactly the same thing in exactly the same manner that they did it before in separate machines, and almost precisely as they did it before in one machine. The court, we think, would hardly find this to be invention, even if he had been the first to combine a hand and foot lever in the same machine. He was not even that. They were combined a little differently in the Wright, in the Buckeye, and in the Champion. They were combined in almost precisely the same way by Evans. What discovery has Runstetler made that entitles him to a broad monopoly? "It is a leading principle of patent law that there must be something more than a change of form, or the juxtaposition of the parts, or the external relations of things, or of the order or arrangement in which things are used, to constitute invention." "The change or the new combination or relations must introduce or embody some new mode of operation or accomplish some effect not before produced." Curtis, sec. 50, and authorities cited. Both of these levers, whose combination in one machine constitutes the only claim to invention, were old—had been used for precisely the same purpose in precisely the same way, and were familiar to the patentee. If either were taken off complainant's machine, the other would operate precisely as it operates now. No new mode of operation, no new effect is produced by bringing them together. Each will elevate or depress the runners alone. They do no more when together, and they do it in no other manner. The fact that the lock is attached to the hand lever is not material. It might be, and frequently was, attached to the foot lever. Where the two levers were used, it was usually attached to the hand lever as more convenient, as in the Wright, Kelly, Evans, and Buckeye planters. It may be that in some cases one foot lever is not sufficient, or two would be more convenient; to add another foot lever would not be invention; to add an old hand lever is not invention any more than the use of two saw guards instead of one was invention in *Dunbar* v. *Myers*, 94 U. S. 197. The additional guard was very different from the first; was differently located, and was very valuable, but it was

not invention to add it to the old. In fact, the union of these two levers in one machine does not constitute a combination in the sense of the patent laws. It is mere aggregation; it is merely bringing together elements which work together, but do not co-operate, to produce any new result or in any new manner. They still remain independent. They are to use Mr. Justice Matthews' simile, "tenants in common, not joint tenants, of the domain of invention," or of the machine. *Pickering* v. *McCullough*, 104 U. S. 310. The court is too familiar with the law on this subject to make it necessary for us to discuss it.

"In a patentable combination of old elements, all the constituents must so enter into it as that each qualifies every other; to draw an illustration from another branch of the law, they must be joint tenants of the domain of invention, seized each of every part, *per my et per tout*, and not mere tenants in common, with separate interests and estates. It must form either a new machine of a distinct character and function, or produce a result due to the joint and co-operating action of all the elements, and which is not the mere adding together of separate contributions. *Reckendorfer* v. *Faber*, 92 U. S. 357; *Glue Co.* v. *Upton*, 97 U. S. 3; *King* v. *Gallem*, 109 U. S. 99.

This court has frequently held that a machine may be vastly better than any other machine, because in it are brought together many valuable elements never brought together before, and yet these elements, while they operate together in the same machine, do not so co-act, each affecting and qualifying the other, as to produce a patentable combination. *Halles* v. *Van Wormer*, 20 Wall. 253. This is precisely what complainants did. Their planter is doubtless better than a planter having only a foot lever, but in making a planter with both, complainants have made no new discovery. They have added nothing to our knowledge of mechanics. They have invented no new combination. There is no such co-action, each part affecting the other, each to an extent dependent on the other, as that they become "joint tenants of the machine." Their estate is susceptible of division by metes and bounds.

If the hand lever is taken off, the foot lever will operate precisely as it did before the hand lever was added.

It may be claimed that if the foot lever was removed, the hand lever would have no connection with the runner frame because they are both connected by the same piece. That piece or part is not a part of the foot lever proper, but is a mere joint or connection. If the foot lever were entirely removed and a straight bar attached to the shaft and the runner frame, the hand lever would operate precisely as it does now. Besides that, the hand and foot levers in the Evans planter are attached to the runner frame in the same way.

In fact, we think we may go further and maintain that the claims of the reissue are invalid or inoperative because they do not apply to the machine—they do not describe it. The hand lever is not and can not be operated independently of the foot lever. When one operates, the other must operate with it, and the words "adapted to be used independently or in conjunction" are a snare. It is a trick of words. They are not independent, as arranged in the patent. They can not be operated independently, because the operator may use his hand and not his feet, or his feet and not his hand, does not alter the operation of the machine, or entitle the complainant by such a trick of language, only thought of after the original patent had been granted nearly two years, to embrace "*any use*" to which these old devices might be put.

Want of Novelty.

The absence of novelty in complainant's patent has been partly pointed out under our former head. The appellees produced, in addition to the five old machines, a number of prior patents for corn planters, hay rakes, and plows, in which hand and foot levers were combined for purposes either the same or analogous to those in the appellant's patent. We will consider them briefly in turn.

Kelly Planter.

Complainant's application for a patent was sworn to

May 10, 1880. The first machine is claimed to have been made in November, 1879. The Kelly or Champion planter is admitted to have been made ever since 1874. It contains a foot lever which elevates the runners and a hand lock lever like complainant's for elevating and depressing and locking the runners, and by placing the feet against the hand lever it becomes a foot lever for depressing. It differs from complainant's in that the hand and foot lever can not be used separately for depressing. They can be used independently or conjointly for elevating and locking out of the ground, and while complainant's machine has some advantages of construction over the Champion, any mechanic with the Atkinson foot lever and the Champion hand lock lever before him would have no difficulty in constructing complainant's machine.

Wright Planter.

The McSherry Wright planter was made in 1876; it had two foot levers for elevating the runners. These foot levers were attached to the runner frame by chains, which would prevent the levers being used to depress the runners. It would, however, be but a simple matter to substitute a solid link for these chains. Indeed, this was done on the hand lever in the Wright planter made the next year, by John Dodds, which then was capable of depressing as well as elevating the runners. It has, in conjunction with these foot levers, a hand lock lever, which, with the link in place of the chain connection put on in 1877, is adapted either independently or conjointly with the foot levers, to raise or depress and lock the runners.

The Wright planter of 1877 differs from the 1876 planter, in that the solid link was substituted for the chain. There is no question as to the date of these machines.

Buckeye Planter.

The Buckeye planter is clearly proven to have been made as early as 1878, and a considerable number were sold for the spring planting in 1879, more than a year earlier than complainant's original patent. The exhibit was

sold to Mr. Vincent in 1878, without a hand lever, but in the winter was returned to the manufacturer to have the drill attachment altered, when the hand lever was put on, and it was on March 10, 1879, as shown by the bill of lading (Rec. p. 238), shipped back to Mr. Vincent exactly as it stands now, and was used by him that spring and every season since in planting all his corn. This planter has a foot and hand lock lever rigidly attached to one another. These levers can be used independently or conjointly to raise and lock the runners. The hand lever can be used iadependently to depress and lock them. The foot lever can not be used alone to depress, but one of the earliest of these planters, made before 1879, was provided with a foot piece attached to the hand lever, by which the feet could also be used to depress the runners.

Evans Planter.

The Evans corn drill and planter represents a machine made in 1878, which in the spring of that year was used to plant successfully fifty-six acres of corn. It was never used afterward, as it was returned to the shop, and in a fire which destroyed the building was burned. Twenty-five machines were made in 1878, on one of which the hand lever was put. After the fire, part of the hand lever, which is iron, was picked out of the debris and put on one of the twenty-four planters made at the same time, and in all respects identical with the one burned. This is the "Exhibit Evans Corn Drill and Planter." It has a foot lever operating, as complainant's experts admits, on the same principle as Atkinson's, or complainant's foot lever. It has a hand lock lever, not rigidly attached as in complainant's machine, but by a latch or hook as in defendant's. These two levers may be used independently or in conjunction to elevate or depress the runners, and lock them in any position. It possesses all the features claimed in the patent; perhaps not so well or to the same extent as complainant's, but the difference is only one of degree or construction, and the patent law does not consider degrees of efficiency. It is adapted to elevate and depress and lock the runners inde-

pendently or together exactly as described in the claims. This planter alone is a complete anticipation of complainant's alleged invention, and nearly two years earlier than the alleged invention.

Among the patents offered by defendants, besides the Kelly and Atkinson patents, are a number of hay rake patents which show the same combination of hand and foot levers. The Trader patent of May 9, 1876 (Rec., p. 348), is provided with a foot lever hinged or pivoted near the middle. By pressing on the front end, the rake teeth are kept down or depressed; by pressing on the rear end, the teeth are elevated and the hay released. Rigidly attached to this foot lever is a hand lever which moves with it. It may be used to assist the operation of the foot lever, or each may be used alone. It lacks only the lock, but all these forms of locks were used on hand and foot levers in corn planters and all classes of machinery many years prior to complainant's alleged invention. Complainant's first and third claims do not mention a lock. This Trader lever could, without a single material change—by simply changing the angle of the hand lever—be put on complainant's machine and be competely operative.

The Kimball patent of 1864 (Rec., p. 346)—sixteen years prior to complainant's alleged invention—has a foot lever for elevating and depressing the rake teeth, combined with a hand lever adapted to be used to assist the operation of the foot lever, or either may be used independently. The same may be said of the Scofield & Wise patent of 1869 (Rec., p. 344), though the levers in this machine are more complicated. So also of the Lane patent of 1876 (Rec., p. 340), for sulky plows, which was cited by the Patent Office to Runstetler's original application.

To evade the anticipations Runstetler swore in his application for a reissue that he was the first to combine in a corn planter a foot lever and hand lock lever for elevating and depressing the runners. Supposing he was—which is not true—he has made no invention. It is a well settled principle of law that "there may be invention in applying a new device to an old object, but in applying an old contrivance to a new use

there can not." Curtis, sec. 56; *Losh* v. *Hague*, 1 Webster's Patent Cases, 207; *Tucker* v. *Spalding*, 13 Wall. 453; *Brown* v. *Piper*, 91 U. S. 37; *Roberts* v. *Ryer*, 91 U. S. 157.

It is not necessary to enlarge upon the law applicable to such a case as the Runstetler combination. It is accurately characterized by Mr. Justice Bradley, in *Atlantic Works* v. *Brady*, 107 U. S. 192:

"The process of development in manufactures creates a constant demand for new appliances, which the skill of ordinary head workmen and engineers is generally adequate to devise, and which, indeed, are the natural and proper outgrowth of such development. Each step forward prepares the way for the next, and each is usually taken by spontaneous trials and attempts in a hundred different places. To grant to a single party a monopoly of every slight advance made, except where the exercise of invention somewhat above ordinary mechanical or engineering skill is distinctly shown, is unjust in its principle and injurious in its consequences. The design of the patent laws is to reward those who make some substantial discovery or invention which adds to our knowledge and makes a step in advance in the useful arts. Such inventors are worthy of all favor. It is never the object of those laws to grant a monopoly for every trifling device, every shadow of a shade of an idea, which would naturally and spontaneously occur to any skilled mechanic or operator in the ordinary progress of manufactures. Such an indiscriminate creation of exclusive privileges tends rather to obstruct than to stimulate invention. It creates a class of speculative schemers who make it their business to watch the advancing wave of improvement, and gather its foam in the form of patented monopolies, which enable them to lay a heavy tax upon the industry of the country without contributing any thing to the real advancement of the arts. It embarrasses the honest pursuit of business with fears and apprehensions of concealed liens and unknown liabilities to law suits and vexatious accountings for profits made in good faith."

We think it may fairly be admitted that, if the original

patent is construed as strictly limited to the construction described and claimed, with the foot lever rigidly attached to the shaft "d," with a slot at the forward end, and the hand lever also rigidly attached to the shaft "d," it may be valid. It is not necessary to discuss that question, because, first, it is not infringed; second, because it has been abandoned in the reissue.

But the moment it is attempted to claim more than that, the claim is met by the patents and anticipating machines above referred to, and is clearly invalid.

Invalidity of Reissue.

Having now presented to the court the state of the art prior to the application for the patent, we have shown that the claim of the original patent covered every thing that was in the least degree novel; it secured to the patentee all that was his.

That it "fully and clearly, without ambiguity or obscurity, described and claimed a specific invention, complete in itself, so that it could not be said to be inoperative or invalid by reason of a defective or insufficient specification, [therefore] a reissue could not be had for the purpose of expanding and generalizing the claim, so as to make it embrace an invention not described and specified in the original." *James* v. *Campbell*, 104 U. S. 370. There was, therefore, no ground for a reissue.

Laches.

The claims are clearly enlarged.

The appellant first put these planters on the market for the season of '80, the first planter having been made in November, '79, and the patent applied for May 17, 1880.

Two years later, or May 15, 1882, it applied for a reissue. In the mean-time, the machine had been on the market three seasons, and, as we have already seen, the "Buckeye," the "Wright," the "Champion" or Kelly planters had all been on the market three or more seasons. These planters would all infringe the claims of the reissue. The complainants contended below that these machines

were not early enough in date to anticipate the *original* patent. Even if this were true, the fact that they were extensively made and sold while appellant slept on its rights for nearly two years is sufficient ground to invalidate the reissue, even if it had only been broadened to include what might have been claimed in the original. *Mahn* v. *Harwood*, 112 U. S. 354.

The patentee gave no excuse for his delay; no good reason existed or could be offered. The original claim was clear and explicit. More than that, an attempt to secure a broader claim had been made in the application for the original patent, and rejected by the Patent Office. (See File Wrapper, Rec. p. 368.) This rejection had been acquiesced in, and the patent taken out and published to the world. The patentee could not then come back, and by reissue claim as his own what he had constructively dedicated to the public. *Sargent* v. *Hall*, 114 U. S. 63; *Shepard* v. *Corrigon*, 116 U. S. 593; *Sutter* v. *Robinson*, 119 U. S. 530; *Miller* v. *Brass Co.*, 104 U. S. 350; *Flower* v. *Detroit*, 127 U. S. 563; *Woolensak* v. *Reiher*, 115 U. S. 96; *Leggett* v. *Avery*, 101 U. S. 256.

We find, in the file of the original patent (p. 368), the following rejected claim:

"*In combination with the centrally* pivoted slotted foot lever, *F*, the shaft, *d*, lifting hand lever, *D*, with the locking devices for holding the lever, *F*, rigid in any desired position, substantially as herein set forth." This claim was rejected by the office for want of novelty. It is for the combination of the two levers shown and described in the patent. The combination here described is more narrow than the claims of the reissue. It differs from the first in being limited by its reference to the parts by letter, and the shaft, *d*, but even thus narrow it was rejected for want of novelty, and the rejection acquiesed in for nearly two years. They can not then come in and secure, by reissue, even broader claims than those rejected in the original application.

Re-issue for a Different Invention.

But aside from all this question of delay and abandonment, we maintain that had the reissue been applied for and secured at once, it would be invalid, because it covers an invention entirely different from that claimed in the original, and which was not the invention of this patentee at all; one which was not "suggested or indicated" in the original patent as issued, and which was not "intended to have been secured by the original patent." *Parker & Whipple* v. *Yale Dock Co.*, 123 U. S. 123; *Hoskins* v. *Fisher*, 125 U. S. 217; *Flower* v. *Detroit*, 127 U. S. 571.

His Honor, Judge Baxter, says, in his opinion (p. 109):

"The foregoing first claim of the original patent ought, in view, as well of its own terms, as of the correspondence relating thereto, which passed between the office and the inventor's solicitors, shown by the file wrapper, to be restricted to the specific combination therein described. This was all to which the inventor was entitled, every thing else having been anticipated by others. Thus construed, the defendant's planter is not an infringement of the original patent. This was conceded by the complainant's expert in his testimony, and by counsel in the argument of the cause, but defendant's planter is, as they contend, and as the court concedes, an infringement of the reissued patent. The reissue is not, as we think, for the same invention covered by the original letters, and is invalid."

It is claimed by appellant's counsel that Judge Baxter's statement, that it was admitted that defendant's machine does not infringe the original claim, is incorrect. Although Judge Baxter is right, and it was admitted, it is unnecessary here to dispute that point. The facts are before the court.

This admission by counsel in argument does not appear in the record, but is plain from answer 64 of complainant's expert (Rec., p. 138), and the patentee clearly admits it in his application for the reissue.

In his affidavit accompanying his petition for a reissue, (Rec., p. 384), the inventor says, the original claim is "limited to a *slotted* foot lever combined with a hand lever *by means of a shaft.*" This the defendants did not use, and whether admitted by counsel or not, there is not, *and can not be*, a particle of doubt that defendant's machine does not infringe the claim of the original patent. That was the sole reason for an attempt to reissue. The record shows that many manufacturers were making planters with combined hand and foot levers, but combined in a different manner from that shown in the patent. It was in the hope and for the purpose of stopping this competition that the reissue was sought.

The reissue was applied for by the same solicitors who took out the original; and nearly two years after accepting the patent, and acquiescing in the rejection of a claim narrower even than any in the reissue, they discover that this original patent is inoperative and defective. Why? How is it "defective and inoperative?" "Because of the restricted character of the claims." Rec., p. 384.

In his affidavit, Runstetler further says (p. 384): "Whereas he (Runstetler) was the first to combine with an elevating and depressing foot lever a hand piece moving in conjunction with said foot lever, and adapted to be used independently or in conjuction with said hand lever."

This the record shows to be false, and he knew it, though the Commissioner of Patents may not have known it. The reissue was allowed on a false statement of facts.

How this "restricted claim" was enlarged will be evident upon a comparison of the original and reissue. The words in italics in either column are not found in the other.

From original specification.	*From reissue specification.*
My improvement consists, first, in the arrangement of a lifting hand lever, *mounted upon a shaft*	My improvement consists, first, in the arrangement of a lifting hand lever, connected to *a* foot

and connected to *the* foot lever *centrally*, pivoted to the main frame, the forward end of which lever is hinged to the runner frame, *and* the several parts being so arranged that the runner frame may be controlled by either the hand lever or foot lever, or both, at the will of the operator.

d represents a shaft journaled at one end *to* the main frame, and at the other to the seat standard.

c' represents the journal bracket at the seat standard, the foot lever *F* being rigidly connected to and journaled on the shaft *d*.

D represents a hand lever rigidly *attached to the shaft d.*

Original claim.

1. In a corn planter having the rear main frame mounted on supporting wheels, the front runner frame hinged or pivoted to the main frame, *and operated by an elevating and depressing lever pivoted to the main frame, having its front end slotted and connected to the runner frame by a bolt passing through said slot, in combination with the shaft d, and the lifting hand lever D, rigidly attached to said shaft, for elevating, depressing, and controlling the runner frame,* substantially as herein set forth.

lever which is pivoted to the main frame, the forward end of which lever is hinged to the runner frame, the several parts being so arranged that the runner frame may be controlled either by the hand lever or foot lever, or both, at the will of the operator.

d represents a shaft journaled at one end *in* the main frame, and at the other to the seat standard.

c' represents the journal bracket at the seat standard, the foot lever *F* being rigidly connected to and journaled on the shaft *d*.

D represents a hand lever rigidly *connected to the foot lever by the shaft d, or other equivalent means.*

Reissue claims.

1. In a corn planter having the rear main frame mounted on supporting wheels, the front runner frame hinged or pivoted to the main frame, *the combination of a foot treadle and a hand lever adapted to be used in conjunction or independently for the purpose of elevating or depressing the runners,* substantially as herein set forth.

2. In a corn planter having the rear main frame mounted on supporting wheels, and the front runner frame hinged or pivoted to the main frame, *a foot treadle for elevating or depressing the runner frame, in combination with a hand lock lever, the foot treadle and hand lever adapted to be used in conjunction for forcing and locking the runners into the ground, or lifting and locking them out of the ground,* substantially as herein set forth.

3. In a corn planter having the rear main frame mounted on supporting wheels, and the front run-

ner frame hinged or pivoted to the main frame, *a foot treadle for elevating or depressing the runner frame, in combination with a hand lever rigidly connected therewith, that either hand lever or treadle may be used for forcing the runners into the ground, or lifting them out of the ground,* substantially as herein set forth.

When the original patent was applied for, the inventor knew perfectly well that there was no invention in combining a hand and foot lever in a corn planter; but, by his "*shaft d*," he was enabled to carry his hand lever to one side, where it was within easy reach of the driver's hand, instead of being located at the center, between his legs, as had usually been done.

This was a more convenient arrangement for doing it. He may be entitled his specified means, we need not discuss that, as defendants never used it. It was, however, all he was entitled to, and all he claimed. Now what do we find in this first claim of the reissue? It is clearly an unlimited claim for any corn planter having a hand and foot lever to be used together or independently for lifting or depressing the runners. They need not be attached to a shaft, there need be no shaft at all. They need not be rigidly attached to one another. The foot lever has entirely discarded the slot. There need be no bolt for connecting it to the runner frame. Not a word is said in the original claim about these levers being used independently. It was for a "foot lever in combination with the shaft *d*, and lifting hand lever *D*, rigidly attached to said shaft for elevating, depressing and controlling the runner frame." They were to be used in combination. In the reissue they are claimed to be used independently or in combination. As a matter of fact, this language in the claim is incorrect. They can not, in the proper sense of the word, be independent. They must always operate together; one can not move without the other. The mere fact that the driver may sometimes use his feet without using his hand,

does not make the levers independent. The hand lever is not attached to the runner frame directly, but to a shaft. To this shaft is attached a foot lever, and that to the runner frame. The hand lever operates upon the runner frame only through the foot lever, and therefore can not be used independently of the foot lever. The claim thus describes and attempts to embrace something which is not in the patent, and which the machine described is incapable of doing. Indeed the appellants have here attempted to secure an entirely new invention—if such a combination may be called an invention—a combination that would embrace almost any corn planter having a foot and hand lever, and certainly the three old planters in evidence.

The second new claim is:

"In a corn planter having the rear main frame mounted on supporting wheels, and the front runner frame hinged or pivoted to the main frame, a foot treadle for elevating or depressing the runner frame, in combination with a hand lock lever, the foot treadle and hand lever adapted to be used in conjunction for forcing and locking the runners into the ground, or lifting and locking them out of the ground, substantially as herein set forth."

This claim is as bad as the first. It not only omits all the limitations omitted in the first, but it adds a new element—"a hand lock lever." Not a word is said in the original claim of a lock lever or a lock of any kind. All these locks were old, not only *per se*, but in combination with hand levers on corn planters.

The third new claim is:

"In a corn planter having the rear main frame mounted on supporting wheels and the front runner frame hinged or pivoted to the main frame, a foot treadle for elevating or depressing the runner frame, in combination with a hand lever rigidly connected therewith, that either hand lever or treadle may be used for forcing the runners into the ground or lifting them out of the ground, substantially as herein set forth."

In this claim the rigid connection between the levers,

is recognized, but the shaft which was the means of this connection, and which alone makes it possible, is omitted, and complainant's expert has broadly interpeted it to embrace any hand and foot lever which are capable of being rigidly connected by any means. If they are connected by a hook, as shown in defendant's machine (Rec., p. 130) they infringe. The same language might be used to describe the Evans planter, or the Champion planter, or the Buckeye.

Complainants have endeavored to play the old trick illustrated in the case of *Gill* v. *Wells*, 22 Wall 1. They have taken the single claim of the original and developed it into three separate combinations. The first omits three elements—the shaft, the slot and pin, and the rigid connection, and adds the new and incongruous element of independent use of the two levers. The second omits the same elements and adds the lock. The third omits only two elements; it preserves the rigid connection.

Infringement.

Defendants have a machine in which the foot and hand levers are entirely independent. They need not operate together. The hand lever may be left unused and unmoved during the entire operation of the foot lever. There is, however, a hook by which the two levers may be connected to one another, and when so connected they may be used together to operate the runners.

When so connected by the hook they do not operate together by being rigidly attached to a shaft, *d*, as set forth in the patent, or by being rigidly connected to one another at all directly, but because they are both connected to the runner frame by the same piece.

This machine certainly would not infringe the claims of the original patent. It lacks the "shaft, *d*," which was the novel element of the claim. It lacks the slotted foot lever, and the hand lever rigidly attached to the shaft, *d*. It is indeed entirely different in its construction and arrangement of these parts.

It would, however, unquestionably infringe the claims

of the reissue, and if these claims are valid no planter can be made with a combined hand and foot lever.

The appellants now argue, in order to save the patent, that the reissue claims must be narrowly construed. Just broad enough to include defendant's machine, but not broad enough to be invalid. It is too late to ask for such a construction. The language of the claims must be taken for what it is. A patentee can not ask the court to save his patent by putting into the claims for this case a new meaning, holding the patent valid, and leaving him, in another suit, to adapt the *meaning of the claims* to whatever *exigency may arise.* The court can not redraw the claims, it can only interpret them as they stand. A patent thus made too broad can only be corrected, if at all, by again reissuing it, and restoring it to its proper form. This is not the province of the court.

Abstract of Evidence.

Throughout this brief we have referred to certain facts as proven, especially with reference to the state of the art, as shown in defendant's exhibits.

For the convenience of the court, we add a short abstract of the testimony, with citations to the pages of the record.

The Kelly Planter.

The first of these exhibits, in point of time, is the Champion or Kelly planter. These machines were first made in Troy, Ohio, by Beedle & Kelly, as early as 1874, with the hand and foot levers, and patented by Mr. Kelly in 1876 (p. 349), and have been made and sold with minor alterations ever since (p. 270). Complainants do not contradict this.

Wright Planter.

The next exhibit, in point of time, is the Wright planter, first made in 1876, manufactured by McSherry & Co., at Dayton, Ohio. As to this exhibit, Edward Brenneman testifies (p. 284), that he is a member of the firm of D. E. McSherry & Co., manufacturers of agricultural implements at Dayton, Ohio. That his firm built about two

hundred Wright planters for Wright & Eckert during the winter of 1876 and spring of 1877, and that to the best of his knowledge "Defendant's Exhibit McSherry Wright Planter" is one of them. That the directions on the hopper cover of that exhibit are the ones his firm had for the Wright planters made at the time above stated. This testimony is not contradicted.

In 1877 and 1878 the Wright planter was built by John Dodds, of Dayton, Ohio, during which time the chain connecting the hand lever with the runner frame was changed for a solid bar or link of iron. As to these planters Orion Dodds testifies that he is the superintendent of John Dodds' rake factory at Dayton, Ohio, and has been connected with said factory for eleven years. That said John Dodds made corn planters for Wright & Eckert in the fall of 1877 and spring of 1878, known as the Wright planter, and that said Dodds has never made any such planters at any other time. That "Defendant's Exhibit Wright Machine" was made by John Dodds, and that of 800 to 1,000 planters made by said Dodds for the season of 1878, there were from 100 to 150 like said exhibit. Rec., p. 273.

Also, David Wilson Banker, a farmer, testifies that he bought the "Defendant's Exhibit Wright Planter" in April, 1879, from Newton Long, a salesman for Fred Kennel, and that said planter has been in his (Banker's) possession ever since. That it is now in all respects like it was when he bought it, with the exceptions that he had changed the scrapers from the top of the frame to the bottom, and had lengthened the connecting rod that connects the hand lever with the frame that raises the shoes out of the ground. (Ques. 5 to 9, and X-Ques. 12 to 16, Rec., p. 281–2.) That James Wood and Arthur Wood, blacksmiths at Poast Town, Ohio, pieced said rod for him. Witness fully fixes the time at which he bought said planter by the fact that he purchased a farm about that time. See Ques. 10 and X-Ques. 17–20, Rec., p. 282.

Also, Newton Long testifies that he was at Middletown, Ohio, in the latter part of 1878 and early part of

1879, selling agricultural implements for Kennel & Long. That he sold the "Exhibit Wright" planter to David Wilson Banker in the spring of 1879. That he never sold said Banker any other planter. That the hand lever was connected to the front frame at the time he sold it to Banker just as it is now on the exhibit. Rec., p. 283.

Also, Samuel S. Banker testifies that he is the son of David Wilson Banker. That "Defendant's Exhibit Wright Planter" belonged to his father, and was used by him (witness) for planting corn in the spring of 1879, 1880, 1881, 1882, and 1883. Fixes date of his first use of the planter by the time he moved on the farm where he now lives, which was in the spring of 1879. Corroborates his father as to the changes made on the planter. Ques. 5–11, Rec., p. 285.

To rebut defendant's testimony as to the Dodds-Wright planter, complainants have produced Joshua C. Norris, who testifies that he worked for John Dodds in 1877 and 1878, and helped make the Wright & Eckert planters. That he never saw any of them that had a link connecting hand lever and foot treadle as on "Defendant's Exhibit Wright Planter," and thinks he would have seen them if any had been made. Rec., p. 153.

Sebastian Ritty, who testifies that he was foreman of John Dodds' shop from 1877 to August, 1884, and knows the Wright & Eckert planters. That the first corn planter with a hand lever connected to the front runner frame with a link, like "Defendant's Exhibit Wright Planter," was in the spring of 1880. That about thirty or forty levers were made with links; some levers with links were put on old planters. See cross-examination of witness, p. 156. This witness was under contract to enter the employ of complainant.

Buckeye Planter.

The Exhibit Buckeye Planter was first made at Xenia by the Shawnee Agricultural Works. They began making planters with hand levers like exhibit in the winter of 1877–1878. The exhibit was originally made without a hand lever, and sold in the spring of 1878. During the

following winter it was returned to the shop and the hand lever added. The evidence is given in substance below:

James C. Vlerebome testifies that in the years 1878 and 1879, he was in the hardware business at New Holland, Ohio. That he sold the "Exhibit Buckeye Planter" to Robert W. Vincent, May 5, 1878, and fixes the date of said sale by his day book and ledger. That he got said planter from the Shawnee Agricultural Company of Xenia, Ohio. That the drill attachment, which was on the planter when sold, did not work well. That the planter was returned to the Shawnee company in the winter of 1878–79, and a new drill attachment and a hand lever put on. That he never sold Vincent any other planter. (On cross-examination, witness admits that he had not seen the planter since the spring he sold it until a few days before giving his testimony, and that Vincent told him that it was returned to the Shawnee company in the winter of 1878–79, and a new drill attachment and hand lever put on.) Rec., p. 220.

Robert W. Vincent, a farmer, testifies that he bought the "Exhibit Buckeye Planter" of James C. Vlerebome, at New Holland, Ohio, in May, 1878. That it did not give satisfaction, and he was ordered to return it to the Shawnee company. That he returned it to said company in the winter of 1878–79. That in March, 1879, it was returned to him. That when it was so returned, the foot lever had been taken off and a hand lever put on, and the drill attachment had also been changed. That the foot levers now on the planter were put on while the planter was at the shops of the Shawnee company in the winter of 1878–79. That the exhibit is now the same in all its construction as it was when returned to him in March, 1879. That the planter was used for the season of 1879 and each season since. That he never bought any other planter of Vlerebome, and never had any other that was made by the Shawnee company. That the present foot levers, put on when the planter was at the Shawnee company's shops in winter of 1878–79, are a little longer than the ones which were on the machine when first

bought. That the hand lever has been mended two or three times by blacksmiths. That William Shaffer and Joseph Cogan helped him plant his corn in 1879, and John Nelson and Joseph Cogan in 1880. Rec., p. 222.

Charles W. Trader testifies that he is president of the Shawnee Agricultural Company, of Xenia, Ohio. That his company made and sold the "Exhibit Buckeye Planter" to Vlerebome. That it was returned to the company's shop by Robert W. Vincent in the winter of 1878–79 to be fixed. That the present hand lever was put on the planter in the early spring of 1879, and that the planter, identically as it now stands, was returned to Vincent in March, 1879.

Witness fixes the date by the company's books and by the shipping receipt received from the railroad agent when the planter was returned to Vincent. Said receipt is dated March 10, 1879, and is offered in evidence as an exhibit, (p. 238). Witness further testifies that his company made other planters with hand and foot levers like Exhibit Buckeye Planter and Exhibit Buckeye Improved Machine. That the first of such planters was made in the early winter of 1876. That at the time said first planter was made Mr. Rhodes and Calvin Phebus were working in the shop and J. B. Lough was traveling salesman. That Lough left in December, 1878; Phebus in March, 1878, and Rhodes in January, 1878; and fixes time by books of the company. That S. R. Collier, superintendent of the Shawnee company, designed and applied the first hand lever like the one on Exhibit Improved Buckeye Machine. That he tested the first machine with Mr. Collier on the farm of Eustus Bonner in the spring of 1878, and that it worked perfectly well. That he used it again on the farm of William Galloway and planted corn with it in the fall of 1878, in the presence of Collier, Lough and Ledbetter. That he does not know what became of said planter. That his company made and sold more such planters after the Vincent, but books don't show to whom. That he sold first planter with lever like Buckeye Improved Machine in spring of 1879 (X. Ques., 113, p. 236). That in 1880 they sent out

levers like that on Buckeye, to be put on planters without returning them to shop. Rec., p. 227.

Calvin R. Phebus, molder, testifies that he was working for the Shawnee company in the latter part of 1877 and early part of 1878, as foreman of their foundry. That he quit working for them March 4th, 1878, and has never worked for them since. That "defendant's Exhibit Lever Former" was brought to him by Mr. Collier, while he was working for the Shawnee company in the winter of 1877 or spring of 1878. That Mr. Collier ordered him to make one, which he did. That he saw a corn planter with hand lever like one on Buckeye planter in the offices of the Shawnee company before he left their employ in the spring of 1878. Rec., p. 239.

H. H. Rhodes, painter, testifies that he worked for the Shawnee company in 1877 and fore part of 1878 as foreman of their paint department. That he left their employ in the latter part of January, 1878. That he saw corn planters like the Buckeye planter at the Shawnee shops while he was working there, and remembers having striped a hand lever like the one on Buckeye planter while he was working there. Rec., p. 242.

Samuel R. Collier, superintendent of the Shawnee company, corroborates Trader as to the Vincent planter, and as to the tests on Bonner's and Galloway's farm. Says that he made defendant "Exhibit Lever Former" in the winter of 1877–78. Corroborates Trader as to the time Phebus, Lough and Rhodes left the Shawnee company. Says the model "Improved Buckeye machine" was made in 1877; that it was changed and hand and foot levers put on in 1878—he thinks in the spring, before the traveling men started out. John Beach and Robert Cannon helped make the first hand levers from which the pattern "Exhibit Lever Former" were shaped. Rec., p. 243.

John P. Beacham testifies that he worked for the Shawnee company in the winter of 1877-'78, and then and there made the first hand lever like the one on Buckeye planter. That he used a cast former made from "Exhibit,

Lever Former," to form the lower part of the hand lever, and that Robert Cannon helped him. Rec., p. 262.

Thomas J. Sterling, molder, testifies that he worked for the Shawnee company in the latter part of 1877, and the year 1878. That he then and there saw Exhibit Lever Former, and helped Phebus make two castings off of it. Saw planter like Exhibit, Buckeye Planter, in the office of the Shawnee company, in 1878. Rec. p. 263.

Seth White, painter, testifies that he worked for the Shawnee company, in the fall, winter, and spring, of 1877–78. That he painted a few corn planters with hand levers like Exhibit Buckeye Planter, while Mr. Rhodes was in the employ of the Shawnee company. Rhodes left in January, 1878. Questions 6 and 7, and cross-questions 24 to 30, Rec., p. 265.

Robert Cannon, blacksmith, testifies that he worked for the Shawnee company in 1877 and 1878; has worked for them every year for thirteen years. Helped Phebus make a cast iron formed from "Defendant's Exhibit Lever Former." That he took the casting out of the sand, and that he worked on it half a day smoothing it up and dressing it. Answer 5, Rec., p. 268. That there were two castings made from this pattern. That one of them was melted up, and that the other was used to bend lever irons on for planters, like "Exhibit Corn Planter Lever." That he and John Beacham hammered out a lever similar to Exhibit Corn Planter Lever, prior to the making of the cast iron former. Rec., p. 269.

John B. Lough, traveling salesman, testifies that he was traveling for the Shawnee company, in 1878, selling corn planters and sulky rakes. That he has examined Exhibit Buckeye Planter, and that he saw a planter having similar hand and foot levers, in the shop of the Shawnee company, in the summer or early fall of 1878. That in August, 1878, he tested the planter on the farm of William Galloway, with Charles W. Trader and S. R. Collier. That they planted corn with it at that time, and that it gave entire satisfaction to the men present. Rec., p. 275.

William Shaffer, farm laborer, testifies that he worked for Robert Vincent, on his farm, from March 3, 1879, to Dec. 1, 1879. That he has never worked for him since. (Fixes date by his time book, which is offered in evidence, and by the fact that he had a son born in 1880, which son was born the year after he left Vincent's). That he saw and used a planter with hand and foot levers like Exhibit Buckeye Planter, at Vincent's, in 1879. That it belonged to Vincent, and was used in May. (As to use of hand and foot levers, see questions 11 to 15, p. 289). That Vincent had no other corn planter while he was there. That they planted about ninety acres of corn with this planter in 1879. That John Cogan worked for Vincent while witness did, and helped to plant corn with this planter. That Vincent sent the planter to Xenia immediately after witness began working for him, to have the drill attachment changed. That witness helped to take the planter to the depot to ship it to Xenia. That when it came back from Xenia, there was a hand lever on it. That before it was sent to Xenia, "it had a concern you put your foot on." Answer 61, p. 292. That the planter was away only a few days. That Collier came to Vincent's and fixed something about the drill attachment. As to use of hand lever by pressing it with foot, see questions 2 and 3, on page 294.

Joseph Cogan, farm employe, testifies that he worked for Vincent in 1879, and also in the summer of 1880. That he first saw Exhibit Buckeye Planter, at Vincent's, in the spring of 1879. Fixes date by the time he went to work for Vincent. Answer 7. See answer 8 as to his use of the planter. Rec., p. 321.

To rebut the above evidence as to the Buckeye Planter, the complainants have produced

Calvin R. Phebus (recalled on their behalf), who testifies that he thinks he has got the former mixed up in his mind, but don't know how. Rec., p. 145.

Isaac B. Jones, carpenter, who testifies that he worked for the Shawnee company in the winter of 1878–79. That he was familiar with the corn planters made there. That he didn't see any like Exhibit Buckeye Planter, and thinks

he would have seen them had any been made. That he changed the model "Exhibit Buckeye Improved Machine," in the summer of 1879. That Mr. Collier took two models to him, and he took off the old foot lever and put on the hand lever. Don't fix date by any thing but memory. Rec., p. 177.

Charles W. Trader, recalled in rebuttal, testifies that he sold a Buckeye planter to Bonner, May 15, 1879. That Complainants' Exhibit Buckeye Cut, is in his handwriting. That Defendant's Exhibit Buckeye Colored Cut, was made by J. S. Morgan & Co., of Cincinnati, from a photograph taken from a full-sized planter, prior to July 3, 1879. Morgan's bill for same offered in evidence. It is dated July 3, 1879. Rec., p. 178.

John P. Beacham, recalled in rebuttal, testifies that he made the first hand lever in the latter part of May or first of June, 1878. That it was tested at Bonner's three or four days afterward. That he afterward changed the hand levers, but can't say when. That he made about half a dozen in the September following. That he never had any former for shaping them until after those mentioned were made. Rec., p. 179.

Jordan Robb, the drayman who helped Trader and Collier test the planter at Galloway's in the fall of 1878, testifies that he don't think there was any hand lever on the planter at that time. That after the hand lever was adopted, he thinks the "Complainants' Exhibit Foot Rest," was put on all planters having hand levers. Rec., p. 180.

William H. King, carpenter, testifies that he worked for the Shawnee company from its organization to January 25, 1881. That he was present at the test at Bonner's, and and that there was another Buckeye planter there at that time. That the machine they took out to test was one that was used at the shop to experiment on. Thinks the machine was left in the shop, and was there when he quit, in 1881. That planters with hand levers were made in the fall and winter following the test at Bonner's. That they were all provided with foot rests like Exhibit Foot Rest. That he helped make Exhibit Lever Former in the fall fol-

lowing the test at Bonner's. That there was about a month or six weeks each year when he did not work at the shops. That at such times Mr. Collier and Mr. Trader would be there with one hand. Rec., p. 182.

Evans Planter.

The Exhibit Evans Corn Drill and Planter was made at Springfield in the winter of 1877–78, and used to plant fifty-six acres of corn in the spring of 1878. As to this planter:

A. C. Evans testifies that he is a member of the Evans & Foos Manufacturing Company, manufacturers of agricultural implements, at Springfield, Ohio. That, in 1878, he was a member of the Evans Manufacturing Company, same place. That the first corn planter he ever saw with a combined hand and foot treadle was in 1877, on the farm of Thompson Warder, and was made by Beedle & Kelly, of Troy, Ohio. That the next planter of that kind he saw was made by the Evans Manufacturing, Company for the spring planting of 1878. That he can not produce that planter, but produces one similarly constructed, which is marked Defendant's Exhibit Evans Corn Drill and Planter. That he made twenty-five similar to it that year. That he made the patterns, and that the machine was made under his instructions by L. C. Evans, machine work; J. M. Evans, casting; and James Nelson, blacksmith work. The planter was completed for the spring planting of 1878. That planter was used by Thomas Haley, a farmer near Springfield, for planting corn on his farm in the spring of 1878. That witness saw Haley working it on his farm, and it seemed to be doing good work. That it was brought back to the factory, and kept there until the spring of 1882, when the factory was destroyed by fire and the planter burned. That the hooked link connecting the two levers on the Exhibit Evans Corn Drill and Planter is a part of the old machine, which was picked out of the scraps after the fire. That this exhibit is in all respects like the planter used by Haley in 1878, and that it differs from the other twenty-four machines made that year only

in having a hand lever, which the other twenty-four didn't have. See Ans. 18 to 21, p. 297. That he doesn't know where the other irons of the old machine that was burned are. That the piece on the exhibit is the only part left. That the firm continued right on from 1878 building corn planters with hand levers. That "Defendant's Exhibit Evans Planter," is one that was made by his company and put on the market for the spring planting of 1879, 1880, and 1881. That the first planter like this exhibit were made in the fall and summer of 1878, but that they were first put into practical use in the spring of 1879. See Ans. 63 and 64, pp. 300 and 301, for description of the construction of Exhibit Evans Corn Drill and Planter. The main body of the machine is one of the twenty-five made for the spring planting of 1878. Rec., p. 295.

Jonathan N. Evans testifies that he is a manufacturer of agricultural implements at Springfield, Ohio, and that he was in the same business at said Springfield in 1878. That he saw a corn planter with hand and foot lever similar to "Exhibit Corn Drill and Planter" in the shop of the Evans Manufacturing Company in the spring of 1878. Fixes date in Ans. 5, page 137. That they made twenty-five planters like that exhibit for the season of 1878, excepting that only one had a hand lever. That that one was burned when the shops were burned in 1882. That he cast the rock arm, the box, and ratchet for that machine from patterns made by A. C. Evans. Rec., p. 301.

Louis C. Evans, machinist, testifies that he first saw a planter like "Exhibit Evans Corn Drill and Planter" in the spring of 1878, at the factory of the Evans Manufacturing Company. That he did the greater part of the machine work on the entire machine. That he did the machine work on the latch that connects the arm of the hand lever with the forward part of the foot treadle. That he drilled the holes in it, and placed the pin in the bottom of the bar. That witness cut the notches, and that James Nelson did the blacksmith work on the top of the bar. That he remembers the hand lever on that machine, particularly, as it was the only one of the twenty-five made that

year which had a hand lever. That the latch with the notches on it—on the exhibit, is the original and same piece that was on the machine built in 1878. That if the hand lever and connections were taken off the exhibit it would resemble the other twenty-four machines built at that time. That "Defendant's Exhibit Evans Foot Lever" is a lever that was on one of those twenty-four machines. That the planter with the hand and foot lever like "Exhibit Evans Corn Drill and Planter," built in 1878, was taken to William T. Haley's, then brought back to the factory, and placed on some shelving, and left there until it was destroyed in the fire which burned the shops. In Ans. 21 he identifies the latch on the exhibit as being the same latch that was on the planter made in 1878. Rec., 316.

William T. Haley, farmer, testifies that he was farming in Springfield township in 1878. That he first saw a planter like "Exhibit Evans Corn Drill and Planter" in Evans' shop in the spring of 1878. That he had it on his farm in the spring of 1878, and used it for planting corn. Planted about fifty-six acres with it. (Fixes date in Ans. 8 and 9, page 143.) That he remembers that the levers on that planter were like those on exhibit, because they were the first ones he had ever seen. That he was much pleased with the planter, and thought it the best he had ever seen or used. Rec., p. 304.

Charles B. Slater, farm employe, testifies that he lives at William T. Haley's, and was working for him in 1878. That he helped Haley use a planter like "Exhibit Evans Corn Drill and Planter." That he worked the planter with his feet. That to keep the runners in the ground he worked the lever on top. That he never used any other planter at Haley's farm that was made by the Evans Co. Rec., p. 309.

James S. Haley, son of William T. Haley, testifies that he worked for his father on his farm in 1878. That he saw a planter similar to exhibit on his father's farm in 1878, and used it to plant about fifty-six acres of corn. (Fixes date in Ans. 7 and 8, p. 311). That the planter worked

well. See Ans. 12 and 13, as to construction of old planter. In Ans. 15 to 17 witness tells why his father borrowed the Evans planter. Rec., p. 312.

James Nelson, blacksmith, testifies that he was carrying on a shop in Springfield, Ohio, in 1878. That he first saw a planter like exhibit in the shops of the Evans Mannfacturing Company, in the spring or winter of 1878. That the shops of said company adjoined his shop and lot. In Ans. 6 to 13, p. 319, witness identifies the latch on exhibit as being the one on which he worked and which was put on the old planter made for spring planting of 1878. In Ans. 14, witness fixes date. Rec., p. 318.

To rebut the above testimony as to the Evans planters complainants have produced.

Samuel D. Fogle, who testifies that he sold a planter like Evans' 1879 planters in 1878. That in 1877 and 1878 he was handling agricultural implements and was in the shops of the Evans Company frequently, but never saw a planter like Exhibit Evans Corn Drill and Planter. Rec., p. 140.

Frank C. Riceanson, machinist and wood worker, who testifies that he worked for the Evans Machine Company in the latter part of 1876 to about June 1877. That during that time he does not remember of any two horse corn planters being made there, and that there were no hanging shelves in the first story of the building at that time. That he next worked for the Evans Company about Dec. 30, 1878, and until about March or April 1879. Saw two horse corn planters there when he returned, and such planters were returned to the shop while he was there. That they had been made while he was away. That there was one in the front room. (See Ans. 17, page 185.) As to lever mechanism for operating runner frame on this planter. That the planters that were returned were the same. That he put a new set of wheels and one or two hopper lids on a planter like Exhibit Evans Corn Drill and Planter. That he thinks it left the shop after the wheels were put on. That that old machine had a lever, but whether it was just like the one on exhibit he can't say.

(See Ans. 23, p. 186, as to shelving, when he returned to work in 1878.) That he does not remember of any two horse corn planters being on a shelf suspended from the ceiling when he went back in 1878. That there were always some machines, corn planters, setting in that corner of the shop, and that it might have been there without his noticing it. (Ans. 24 to 27, page 187.) That he began to work for the Evans company a third time in the fall of 1880. That the planter on which he put the hopper lids and wheels had a band lever for thowing in and out of gear. That he thinks it was when he was at work the second time—1878–79—that he put the wheels and hopper lids on the planter. That the planter he put the wheels on was like Exhibit Evans Corn Drill and Planter, but as it was not set up he couldn't say whether it was exactly the same. That he can not describe the hand lever on the old machine, but that it had a spring on top and worked in a ratchet below, and was connected to the runner frame by bolts on the side bar. (As to complainant's Exhibit Evans' Model, see Ans. 61–63, page 190.) That he saw full sized planters like that model in the front part of the shop when he returned to work in December, 1878. That there was only one there when he first went back, but that he helped finish up a number of them. That one was not painted when he first saw it, and was the first planter he ever saw like "Evans' Model." That Nelson's blacksmith shop was on the corner of Jackson and Main streets when he went back to work in Dec., 1878, on the lot which was vacant when he worked for the Evans Company before. That it had been built while he was away, but he don't know exact time. That he does not know whether the machine he put the wheels and hopper lids on had a foot treadle like that on Exhibit Evans Corn Drill and Planter or not, as the planter was not put together. That if the planter was made in Evans' shop, it was made while he was away. Rec. p. 184.

Wilson Oblinger, machinist, who testifies that he worked for the Evans Company about two months just before and after the holidays of 1881–82. That he didn't

see any planter there like Exhibit Evans Corn Drill and Planter, and does not remember any hanging shelf. Rec., p. 192.

E. H. Ogden, farmer near Springfield, who testifies that he bought "Exhibit Ogden's Evans Planter" from Wiseman in Springfield in 1880. That Mr. Evans sent out to him about the middle of August, 1884, and got the dropper seat, rotary plate, and foot lever off his machine. That Exhibit Evans Foot Lever is similar to the one which was on his planter. That he knows of Evans testing a planter on William T. Haley's farm in 1881. That Haley's farm lies just across the road from Ogden's. Rec., p. 193.

O. H. Anderson, agricultural implement dealer, testifies that he sold William T. Haley a Buckeye planter April 25, 1878. Rec., p. 194.

Complainants have also produced a number of witnesses who testify that the Buckeye, Wright, Kelly, and Evans planters are inferior, and would not sell in the market as well as complainant's planter. This testimony was objected to as irrelevant, as the issue is not the degree of efficiency. We think this evidence should not be considered.

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